Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
Application by Verizon Maryland Inc., Verizon Washington D.C. Inc., and Verizon West Virginia Inc., et al., for Authorization To Provide In-Region, InterLATA Services in Maryland, Washington, D.C., and West Virginia	)	WC Docket No. 02-384

COMMENTS OF AT&T CORP.

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COMMENTS OF AT&T CORP.

Pursuant to the Commission's Public Notice, AT&T Corp. ("AT&T") respectfully submits these comments in opposition to the joint application of Verizon for authorization to provide in-region, interLATA services in Maryland, Washington, D.C., and West Virginia.

INTRODUCTION AND SUMMARY

Verizon's 271 application for Maryland, West Virginia and the District of Columbia suffers from both non-pricing and pricing violations of the 271 checklist, each of which is sufficient to warrant rejection of the application. The non-pricing violations include Verizon's GRIPs policy, which violates its duty to provide interconnection at any technically feasible point; its unjust and unreasonable policies concerning returned collocation space; its failure to provide nondiscriminatory access to billing functions, high capacity loops, or directory listings; its failure to provide dark fiber or EELS in

compliance with the checklist; and its refusal to commit to compliance with the state commissions' basic authority to adopt, enforce or modify Verizon's performance assurance plans.

Verizon's UNE prices also suffer from basic checklist violations. In the District of Columbia, Verizon has refused to implement the UNE price reductions recently ordered by the DC Public Service Commission, leaving in effect Verizon's seven-year-old "interim" proxy rates that have been found unlawful by the Court of Appeals and the PSC itself. Verizon's no build/no facilities policy for provisioning loops precludes any finding that Verizon's loop prices comply with TELRIC—or benchmark with the rates established by the New York PSC for Verizon—in any of the three jurisdictions at issue here. And Verizon's switching prices in West Virginia violate TELRIC and fail, by a wide margin, to benchmark with New York.

Finally, it is clear that Verizon's entry into the interLATA market in the three jurisdictions is inconsistent with the public interest. Little UNE-based entry has occurred there, and the prospects for increased UNE-based competition are bleak. Many of the facilities-based CLECs that Verizon identifies as its competitors are going out of business, or are otherwise in financial distress.

The balance of these comments is organized as follows. Part I demonstrates that Verizon has failed to meet its interconnection obligations under Item 1 of the checklist. Verizon's "GRIPs" policy, which only allows CLECs to interconnect at either a Verizon tandem switch or an end-office switch, plainly violates the requirement of Section 251 that CLECs be permitted to interconnect with Verizon's network at any technically feasible point. Moreover, in violation of Section 251(c)(3)'s requirement that Verizon

offer interconnection on terms and conditions that are just and reasonable, Verizon fails to actively communicate the availability of returned (and vacant) collocation space to CLECs, and fails to maintain adequate processes for crediting CLECs who return such space.

Part II demonstrates that Verizon has failed to provide wholesale bills to CLECs that are auditable, in violation of its OSS obligations under Item 2 of the checklist. Specifically, CLECs in Maryland, the District of Columbia, and West Virginia are required to use a manual cross-referencing procedure to verify the accuracy of collocation charges. This manual process not only frustrates the purpose of electronic billing, but also is wholly unwarranted – as evidenced by the fact that in other States in its region, Verizon's BOS/BDT bills allow for fully automated auditing of collocation charges.

Part III demonstrates that Verizon's "no build/no facilities policy" – under which Verizon rejects orders for high-capacity loops when "construction" (as Verizon broadly defines that term) is required – denies CLECs nondiscriminatory access to unbundled high-capacity loops, in violation of Items 2 and 4 of the checklist. As the Maryland PSC recognized, the evidence shows that Verizon's policy creates a barrier to substantial competition. Indeed, in contrast to previous 271 proceedings of the Commission where the evidence of record regarding the policy was limited, the evidence now presented in the three jurisdictions at issue here, as well as in other States in Verizon's region, leaves no doubt that the policy is highly discriminatory and anticompetitive.

Part IV demonstrates that Verizon does not provide dark fiber or EELs on just and reasonable terms, in violation of its obligations under Items 2 and 4 of the checklist. For example, Verizon has not promulgated methods and procedures to effectuate the

requirements of the Commission's *Virginia Arbitration Order*, and provides CLECs with insufficient information regarding the availability of dark fiber. With respect to EELs, Verizon imposes on CLECs a cumbersome and costly "sequential ordering" procedure that Verizon itself is not required to follow in its retail operations – and that CLECs in such States in Massachusetts and Rhode Island are not required to follow.

Part V demonstrates that Verizon does not provide nondiscriminatory access to directory listings. As the Maryland PSC recently recognized, Verizon commits a disproportionate (and substantial) number of errors on directory listings for CLEC customers. More importantly, recent acknowledgments by Verizon – which contradict representations that it previously made to CLECS and to this Commission in the *Virginia 271* proceeding – demonstrate that its processes are inadequate to ensure the accuracy of *any* stage in its processes, even after a CLEC's order has been complete.

Part VI demonstrates the failure of Verizon's UNE prices to comply with TELRIC or to benchmark with New York rates.

Part VII demonstrates that Verizon's performance assurance plans ("PAPs") in the three jurisdictions at issue provide no assurance that Verizon will comply with its checklist obligations after its Application has been approved, because Verizon has refused to waive any right to challenge the general authority of the PSCs in these jurisdictions to modify the PAPs in the future without its consent, even if the PAPs prove to be deficient in their current form.

And Part VIII demonstrates that Verizon's monopoly power over residential service in the three jurisdictions remains virtually unchecked, and that Verizon's local

markets there remain virtually closed to UNE-based competition. For all of these reasons, approval of Verizon's application would be inconsistent with the public interest.

I. VERIZON DOES NOT MEET ITS INTERCONNECTION OBLIGATIONS UNDER CHECKLIST ITEM 1.

Item 1 of the checklist requires Verizon to provide interconnection "in accordance with the requirements of sections 251(c)(2) and 252(d)(1)." 47 U.S.C. § 271(c)(2)(B)(i). These requirements include the requirement of Section 252(c)(2) that Verizon provide interconnection with the CLEC's network "at any technically feasible point within the carrier's network," and "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." *Id.* § 251(c)(2).

Verizon has failed to meet its interconnection obligations in two key respects. First, in the guise of its "geographically relevant interconnection points" ("GRIPs") policy, Verizon is requiring CLECs to interconnect at either a Verizon tandem or end office switch serving the Verizon called party – contrary to Section 251's requirement that CLECs be permitted to interconnect with Verizon's network at any technically feasible point. Second, Verizon fails to maintain adequate processes for crediting CLECs who return collocated space, and to take reasonable steps to promote the use of returned space (which is available at a discounted rate) by CLECs seeking collocation space. Verizon's disregard of its interconnection obligations substantially increases CLECs' costs and impedes their ability to compete effectively in the local exchange market.

A. Verizon's "GRIPs" Policy Violates Its Obligation To Provide Interconnection At Any Technically Feasible Point.

If a CLEC seeks to interconnect with Verizon's network, Verizon requires that the CLEC interconnect at what Verizon calls "geographically relevant interconnection points" ("GRIPs"), which Verizon defines as either a Verizon tandem switch or an end-office switch serving the Verizon called party. This "GRIPs" policy effectively gives Verizon the exclusive right to determine the point of interconnection ("POI"). Moreover, by creating an artificial distinction between the POI and what it terms an "interconnection point" ("IP") – which Verizon has unilaterally deemed the point for determining the parties' financial responsibilities for purposes of interconnection -- Verizon's policy improperly shifts some of the costs of terminating Verizon's traffic to the CLECs.

The GRIPs policy is flatly inconsistent with the requirement of Section 251(c)(2)(B) that Verizon allow CLECs to interconnect with Verizon's network "at any technically feasible point." As the Commission has previously explained, the statutory requirement "allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carrier's costs of, among other things, transport and termination of traffic." *Local Competition Order* ¶ 172. Thus, Section 251(c)(2) places in the CLECs' hands the decision as to the POI (provided that the CLEC's chosen POI is technically feasible), and makes each carrier (ILEC and CLEC) responsible for its own origination costs – *i.e.*, the costs related to delivering that carrier's originating local traffic to the POI, which is the CLEC-designated location where the parties mutually exchange their traffic.

By limiting the POI to a tandem switch or an end-office switch serving the Verizon called party, the GRIPs policy denies CLECs their right, conferred by Section

251, to choose any technically feasible point of interconnection with Verizon's network. Moreover, Verizon's policy has the effect of substantially increasing a CLEC's costs (and decreasing Verizon's costs). The selection of a POI affects how a CLECs' costs will be split between origination and termination costs, and what the amount of those costs will be. For example, if a CLEC is required to deliver its traffic to a POI at Verizon's tandem, the CLEC will be required to pay both transport and termination costs to Verizon for taking the traffic from the tandem to the end-office and, ultimately, the third party. In that situation, the CLEC's origination costs are the costs associated with getting traffic to the Verizon tandem, plus its reciprocal compensation costs for transport and termination. By contrast, if the CLEC terminates its traffic at Verizon's end office, the CLEC's origination costs will be the cost of delivering its traffic to the end office, while its reciprocal compensation costs will only be the termination portion of reciprocal compensation (the cost from the end-office to the called party). Consequently, the POI that is selected has a marked impact on a CLEC's costs of transport and termination.[1]

The effect of the GRIPs policy is to unlawfully inflate the costs incurred by a CLEC, while artificially reducing those incurred by Verizon. The additional costs to the CLEC can be quite considerable. For example, in the *Virginia Arbitration* proceeding, AT&T estimated that Verizon's similar GRIPs proposals would increase AT&T's local interconnection costs by between approximately $1.8 million and $3.1 million annually. In Delaware, Cavalier raised a claim for more than $9 million.

[1] The Commission has recognized the effect of the choice of a POI on a carrier's costs of transport and termination. *See, e.g., Local Competition Order* ¶ 172 (stating that allowing CLECs to choose the most efficient POI will lower the CLEC's "costs of, among other things, transport and termination").

Verizon's policy is based on its self-created (and torturous) distinction between a POI (which Verizon treats as the point where the parties' facilities *physically* interconnect) and what it has termed an "interconnection point" ("IP"). The IP, which is Verizon's sole creation, is the location where, in Verizon's view, the carriers' *financial* responsibilities begin and end, *i.e.,* where reciprocal compensation begins, or where the originating carrier delivers this traffic for termination. Verizon's distinction, however, finds no support in the 1996 Act or in the Commission's rules. In fact, the Commission's orders and regulations have used the terms "interconnection point" and "point of interconnection" interchangeably.[2]

In its *Virginia Arbitration Order*, the Commission rejected Verizon's attempt to incorporate its GRIPs policy into the interconnection agreements between Verizon and the CLECs. Instead, the Commission adopted language, proposed by the CLECs, that established the CLECs' right to interconnect at a single point in each Local Access and Transport Area ("LATA"), and made that point the financial demarcation point between the parties. *Virginia Arbitration Non-Cost Order* ¶¶ 40-54. The Commission held that the CLEC's proposed language "more closely conforms to the Commission's current rules governing points of interconnection and reciprocal compensation than do Verizon's proposals." *Id.* ¶ 51. The Commission explained:

> Verizon's interconnection proposals require competitive LECs to bear Verizon's costs of delivering its originating traffic to a point of

[2] *See, e.g., Local Competition Order* ¶ 209 ("Section 251(c)(2) gives competing carriers the right to deliver traffic terminating on an incumbent LEC's network at any technically feasible point, rather than obligating such carriers to transport traffic to less convenient or efficient interconnection points"); 47 C.F.R. § 51.701(c) ("For purposes of this subpart, transport is the transmission and any necessary tandem switching of local telecommunications traffic subject to section 251(b)(5) of the Act from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by the carrier other than an incumbent LEC").

> interconnection beyond the Verizon-specified financial demarcation point, the IP. Specifically, under Verizon's proposed language, the competitive LEC's financial responsibility for the further transport of Verizon's traffic to the competitive LEC's point of interconnection and onto the competitive LEC's network would begin at the Verizon-designated competitive LEC IP, rather than the point of interconnection. By contrast, under the petitioners' proposals, each party would bear the cost of delivering its originating traffic to the point of interconnection designated by the competitive LEC. The petitioners' proposals, therefore, are more consistent with the Commission's rules for section 251(b)(5) traffic, which prohibit any LEC from charging any other carrier for traffic originating on that LEC's network; they are also more consistent with the right of competitive LECs to interconnect at any technically feasible point. Accordingly, we adopt the petitioners' proposals.

Id. ¶ 53 (footnotes omitted).

Verizon contends that, in each of the three jurisdictions at issue here, it has entered into at least one interconnection agreement that does not follow the GRIPs policy – and that, under the *Virginia 271 Order*, "this is sufficient to satisfy the checklist" because "GRIPs is not the only form of network interconnection available" in these jurisdictions. Application at 17-18 n.17 (citing *Virginia 271 Order* ¶ 173). However, both Verizon's argument and the reasoning of the *Virginia 271 Order* overlook the nondiscrimination requirement of Section 251. Even if Verizon's interconnection agreements with *some* CLECs do not follow the GRIPs policy, Verizon does not deny that it applies this policy to *other* CLECs seeking to interconnect with Verizon's network. Such different treatment of CLECs is plainly discriminatory.[3]

[3] Verizon cites its current interconnection agreement with AT&T in West Virginia as an example of an agreement that does not contain GRIPs provisions. Lacouture/Ruesterholz WVA Decl. ¶ 33. Although that agreement does not mention GRIPs, it makes the same distinction between POIs and IPs as the GRIPs policy. *See* Interconnection Agreement between Verizon and AT&T (Application, App. I-WV, Tab 8 at Attachment IV, Section 1.2.2). In any event, the inclusion of these provisions in the agreement did not constitute acquiescence in, or approval of, the GRIPs policy by AT&T. AT&T's agreement simply incorporates by reference the identical provisions of a previous interconnection agreement made by WorldCom with Verizon for West Virginia. Interconnection Agreement, *supra*, at 1. AT&T "opted into" the WorldCom agreement because taking the issue to arbitration would have had no effect on Verizon's unreasonably high UNE

Verizon also claims that it "has modified its Model Interconnection Agreement to provide for a single point of interconnection per LATA." Application at 17-18 n.17. This is incorrect. As the Maryland PSC found last month, Verizon's proposed language in that agreement "is substantially the same . . . as the language rejected by the FCC in the Virginia Consolidated Arbitration."[4] The language of the interconnection provisions of the Model Interconnection Agreements in Maryland, the District of Columbia, and West Virginia[5] is essentially the GRIPs policy without the GRIPs moniker:

- Section 2.2.4 of the Interconnection Attachment of each Model Interconnection Agreement ("Interconnection Attachment") requires a CLEC to interconnect at "each Verizon tandem in a LATA" that subtends Verizon end offices to which a CLEC sends calls for Verizon to terminate. By contrast, the Commission's rules provide that interconnection can be at a single point in a LATA.

- Section 2.2.5 of the Interconnection Attachment requires interconnection at each Verizon end office at which the volume of traffic exceeds the equivalent of one DS1 and/or 200,000 minutes of use in a single month. By contrast, the provisions ordered by the Commission in the Virginia arbitration have no such mandatory end-office interconnection requirement. *Virginia Arbitration Non-Cost Order* ¶ 53.

- Section 2.2.6 of the Interconnection Attachment limits the number of trunks between a CLEC POI and a Verizon tandem switch to 240 at any time, forcing the establishment of trunks to Verizon end offices whenever that number is exceeded. No such limitations are included

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rates which, by themselves, precluded any meaningful entry by AT&T into the West Virginia local exchange market.

[4] *See* Letter from Maryland PSC to William R. Roberts (Verizon-Maryland Inc.) in Maryland PSC Case 8921, dated Dec. 16, 2002 (Application, App.) at 5.

[5] *See* Model Interconnection Agreement for Maryland (Application, App. P-MD, Tab 2, Interconnection Attachment, Section 2); Model Interconnection Agreement for the District of Columbia (Application, App. I-DC, Tab 1, Interconnection Attachment, Section 2); Model Interconnection Agreement for West Virginia (Application, App. I-WV, Tab 1, Interconnection Attachment Section 2). The language of the provisions cited herein appears in the Model Interconnection Agreements for all three of the jurisdictions that are the subject of Verizon's current Application.

in the interconnection provisions approved in the *Virginia Arbitration Non-Cost Order*. *Id.*

- Section 1 of the Interconnection Attachment makes clear that a technically feasible POI must be "on Verizon's network," and can never be a CLEC wire center, switch, or transport facility. By contrast, the interconnection provisions required in the *Virginia Arbitration Non-Cost Order* call for interconnection at the CLEC's switch, in the absence of agreement to the contrary. *Id.*

Because the Model Interconnection Agreement implements the GRIPs policy in fact (if not in name), the Maryland PSC directed that Verizon "not [to] include GRIPs or VGRIPs in any Model Interconnection Agreement in use in Maryland unless expressly authorized by this Commission or the FCC." *Id.* Although Verizon states in its Application that it will follow that directive in Maryland, it makes no such commitment for the District of Columbia or West Virginia.[6]

Even if (as Verizon has previously suggested) the Model Interconnection Agreement's interconnection provisions are simply a "starting point" for negotiations with individual CLECs, that does not excuse Verizon's failure to comply with Section 251(c)(2) and adhere to the provisions mandated in the *Virginia Arbitration Order*. CLECs should not be required to bargain (and give up something of value) in order to obtain interconnection provisions that are consistent with the 1996 Act. Furthermore, many CLECs lack sufficient bargaining power to persuade Verizon to agree to interconnection provisions different from those set forth in the Model Interconnection Agreement. Verizon has every incentive to refuse to any such changes and to force CLECs to take the dispute to arbitration under the Act, because CLECs with limited

[6] *Compare*, *e.g.*, Lacouture/Ruesterholz MD Decl. ¶ 33 *with* Lacouture/Ruesterholz WVA Decl. ¶ 33.

resources would likely acquiesce in the provisions of the Model Interconnection Agreement rather than incur the expense of an arbitration proceeding.

Section 251(c)(2) and the Commission's rulings make clear that the CLEC – not the ILEC – chooses the point of interconnection (both physical and financial) with the ILEC's network, as long as the POI is technically feasible. By violating that fundamental principle (even after its GRIPs policy has been rejected by both this Commission and the Maryland PSC), Verizon is clearly in violation of Item 1 of the checklist.

B. Verizon's Policies Regarding Returned Collocation Space Are Unjust and Unreasonable, In Violation of Section 251(c)(2) and the Checklist.

Verizon's policies regarding the return of collocation space violate the requirement of Section 251(c)(2)(D) that interconnection be provided "on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." Moreover, Verizon does not take reasonable steps to promote the use of the returned space (which is available at a discounted rate) to collocators seeking new space.

Over the last two years, and for various reasons (including poor market conditions), CLEC have found it necessary to return an increasing – and substantial -- number of collocations to Verizon. It appears that CLECs are returning at least 50 percent of the collocation arrangements that they leased from Verizon. For example, according to testimony in the Maryland PSC's Section 271 proceeding, Verizon's own records indicate that, of the more than 1,000 collocation arrangements provisioned by Verizon in Maryland, CLECs have returned 566 arrangements representing more than 18,000 square feet of collocation space.[7] Evidence in the West Virginia PSC's 271

[7] Maryland PSC 271 Proceeding, Tr. 561-562 (Maguire) (Application, App. B-MD, Vol. 8, Tab 34)..

proceeding indicated that CLECs had returned 35 of the 79 collocation arrangements provisioned by Verizon through July 2002.[8]

Verizon's Federal and respective State tariffs require that when a collocator (*i.e.*, a CLEC) returns collocation space, it is entitled to a credit for the unamortized portion of the non-recurring space and facilities conditioning charge when the collocation space is reused either by another CLEC or by Verizon itself.[9] Given that CLECs pay a non-recurring Space and Facilities Charge of approximately $47,000 under Verizon's FCC tariff and approximately $32,000 under the State tariff for 100 square feet of collocation space, the potential refund for returned collocation space is substantial. Assuming a conservative rate of $320 per square foot ($32,000 divided by 100 square feet), and applying that rate to the 18,000 square feet of returned collocation space in Maryland alone, CLECs could receive millions of dollars of refunds.[10]

Despite the large number of returned collocation arrangements, however, Verizon has provided credits on only a small percentage of them. For example, evidence in the Maryland PSC's 271 proceeding indicated that in Maryland Verizon provided credits on only 11 occasions, even though 566 collocation arrangements were returned in that State.

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[8] West Virginia PSC 271 Proceeding, Tr. III-232 (Maguire) (Application, App. B-WVA, Vol. 8, Tab 26).

[9] For example, Verizon's Maryland Tariff No. 218, 2B.4.d provides that if a CLEC vacates its collocation arrangement, the CLEC "will be credited with the Space and Facilities Charge (less costs) upon subsequent occupancy of the same collocation arrangement by another CLEC or if the same Collocation arrangement is used by the Telephone Company. The subsequent CLEC will be responsible for the payment of the remaining unamortized amount of the Space and Facilities Charge prior to occupying the Collocation arrangement." *See also* Verizon FCC Tariff No. 1, Section 19.

[10] The rate of $320 per square foot is conservative ecause it is based on the State rate of $32,000. If the Federal charge of $47,686 for the first 100 square foot is used, the rate would be approximately $477 per square foot (and the resulting credits would be approximately 50 percent higher).

In West Virginia, *none* of the CLECs who have returned collocation space have received a credit. Verizon admits in its Application that it has issued credits on only 16 vacated collocation arrangements in Maryland, 15 collocation arrangements in the District of Columbia, and ("where appropriate") a "handful" of collocation arrangements in West Virginia that have been re-occupied by new collocators.[11]

Even in those limited circumstances when Verizon has issued credits, they have been inadequate as a result of the improper amortization period used by Verizon to calculate the amount of the credit that it will pay. That amount is directly related to the length of the amortization period used; the longer the amortization period, the greater the credit that Verizon will pay to a vacating collocator.[12] Rather than use the 30-year period which it has previously applied to depreciation of collocation space used – and which its own witness admitted was apparently the period called for by its Federal tariff -- Verizon has incorrectly used a 12-year period for depreciation of collocation space to calculate credits.[13] Verizon's use of the shorter period substantially increases the cost to the CLEC of collocation during the interval between its return and its subsequent re-use.[14] As a

[11] Lacouture/Ruesterholz MD Decl. ¶ 77; Lacouture/Ruesterholz D.C. Decl. ¶ 72; Lacouture/Ruesterholz WVA Decl. ¶ 72.

[12] *See* Maryland 271 Proceeding, Tr. 550-551 (Maguire) (Application, App. B-MD, Vol. 8, Tab 34).

[13] Under its Federal (FCC) tariffs, a CLEC would be entitled its up-front collocation costs amortized over a 30-year period. *See* FCC Tariff No. 1, § 19.3(p) (stating that carrier is entitled to recover up-front costs minus (1/360 * number of months carrier used collocation cage). During the Maryland PSC's hearings in its 271 proceeding, Verizon's own witness admitted after reviewing the FCC tariff that "from what is written here, it does imply that it is a 30-year period." Maryland PSC 271 Proceeding, Tr. 549-550 (Maguire) (Application, App. B-MD, Vol. 8, Tab 34).

[14] If Verizon subsequently re-uses a CLEC's returned collocation arrangement, its improper use of an accelerated 12-year amortization period also lowers Verizon's cost of using the space for itself or for its affiliates.

result, the credits which Verizon has issued to date have been well below the amounts called for by the applicable Federal and State tariffs.[15]

In addition to its failure to give adequate credits to CLECs for returned collocated space, Verizon fails to provide collocation on just and reasonable terms and conditions because – rather than actively make known the availability of returned space -- Verizon effectively seeks to place the burden on CLECs to find new collocators to re-use the "old" collocator's space. Verizon has taken the position that it is under no statutory requirement to "affirmatively advertise" the availability of returned space, and has suggested that the vacating collocator should take steps to make other potential collaborators aware of such availability. *E.g.*, Lacouture/Ruesterholz MD Decl. ¶ 79.

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[15]As AT&T has described in the Virginia Commission proceeding involving Verizon's pending application to discontinue expanded interconnection service through physical collocation, although Verizon has asserted that the normal life of a collocation arrangement is equivalent to the 12-year depreciation life of the circuit equipment, KPMG found in an independent review of Verizon's tariffs and procedures (including information provided by Verizon's subject matter experts) that Verizon applied a 30-year period for depreciation of collocation space. *See* KPMG, Verizon Virginia, Inc., OSS Evaluation Project, Provisioning Domain Results & Analysis Section, at 209 (2002) (Application, App. C-MD, Vol. 2, Tab 5) ("A vacating CLEC obtains a credit if Verizon VA resells the space to another CLEC. The credit will amount to he undepreciated value of the assets that were vacated over a thirty-year period'). KPMG made that finding – which Verizon has not disputed -- as part of the same third-party test in Virginia on which Verizon relies so heavily in its Application. *See, e.g.,* Application at 2, 14, 33, 83, 86, 88, 91, 92, 94, 97, 105. Verizon thus represented to CLECs (through its tariffs) and to KPMG that it used a 30-year period, and CLECs requested collocation space in reliance on Verizon's representation in its tariff that it used an amortization period of that specific duration. In addition to its improper use of a 12-year amortization period, Verizon pays credits over a period of 9 ½ years, even though the payment made to Verizon under the Federal tariffs was a one-time, up-front payment. *See* Comments of AT&T Corp. filed September 18, 2002, in WC Docket No. 02-237, at 4, 14; Reply Comments of AT&T Corp. filed October 3, 2002, in same, at 6-7.

Verizon suggests that the Commission's Docket No. WC 02-237, and pending proceedings being conducted by the Maryland and Virginia PSCs, are the "appropriate forums in which to address" this issue and other issues regarding the return of collocated space. Application at 22-23 n.26; Lacouture/Ruesterholz MD Decl. ¶¶ 77, 80. Verizon's argument is simply an attempt to avoid a finding of noncompliance with the checklist. Each of the issues raised herein is relevant to the issue of whether Verizon's terms and conditions regarding interconnection are just and reasonable – and therefore must be decided in *this* proceeding before the Commission can meaningfully determine whether Verizon is in compliance with Item 1 of the checklist.

This view is unreasonable. As the commercial "landlord" of the central office, Verizon has the most interaction with CLECs interested in collocation and thus should be responsible for promoting re-use of returned space, including communicating the availability of such space to CLECs. Verizon alone has the most current (and most complete) information regarding the status of returned space, any pending applications for collocation space, and its own plans to re-use the space for itself or its affiliates. By contrast, once it returns collocation space to Verizon, the CLEC no longer has information on the subsequent status of that returned collocation.[16]

Verizon, however, has failed – and, indeed, has refused – to make commercially reasonable efforts to attract subsequent users of returned collocation space. Verizon, for example, does not actively communicate to CLECs the availability of returned space. As a result of its passivity, Verizon unnecessarily imposes costs on the vacating CLEC (which must continue to pay for the space until it is re-used by another CLEC), while depriving CLECs interested in collocation of the benefit of lower rates that would be available to them from using the vacated space. Thus, Verizon impedes the ability of both vacating CLECs and would-be collocating CLECs to compete in the local exchange market.[17]

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[16] Verizon claims that AT&T "can track and verify the status of returned collocation space through its collocation bills," because Verizon stops billing monthly charges once space has been vacated and the CLEC has removed its equipment. *E.g.*, Lacouture/Ruesterholz MD Decl. ¶ 78. As Verizon admits, however, the cessation of billing only informs the CLEC that Verizon has accepted the vacated space. *Id.* It does not tell the CLEC, for example, whether applications had been submitted for the returned space; the CLEC would learn of that fact only months later, when Verizon subsequently issued a credit.

[17] Verizon asserts that its web site "identifies central offices where all remaining physical collocation space has been issued to CLECs," and that it "updates the website with information on space limitations within 10 calendar days after determining that physical collocation space is not available in an office." *E.g.*, Lacouture/Ruesterholz MD Decl. ¶ 79. That information, however, is simply the information that Verizon is required to post on its web site by the

II. VERIZON HAS FAILED TO PROVIDE NONDISCRIMINATORY ACCESS TO BILLING FUNCTIONS.

As part of its showing that it is providing nondiscriminatory access to its operations support systems, "a BOC must demonstrate that competing carriers have nondiscriminatory access to its billing systems." *California 271 Order* ¶ 88. Thus, for example, "the BOC must demonstrate that it can produce a readable, auditable and accurate wholesale bill in order to satisfy the nondiscrimination requirements under checklist item 2." *Pennsylvania 271 Order* ¶ 22.

Verizon has not made such a showing. In its *Virginia 271 Order,* the Commission "recognize[d] that Verizon has had a number of problems with its billing systems in the past, a few of which remain to a limited degree." *Virginia 271 Order* ¶ 40. Problems with those billing systems continue despite the passage of time. Recognizing this fact, the Maryland PSC recently expressed concern "that, under the stress of high commercial

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Commission's regulations. *See* 47 C.F.R. § 51.321(h). Verizon has not fully complied in the past with its obligation to post such information. *See Verizon Communications, Inc.*, Order and Consent Decree, 16 FCC Rcd. 16270 (2001) (Consent Decree terminating informal Commission investigation of failure of Verizon to comply with 47 C.F.R. § 51.321(h) but providing for "remedial actions" to be taken by Verizon and for Verizon to make a "voluntary contribution" to the U.S. Treasury). *See also, e.g.,* Lacouture/Ruesterholz MD Decl. ¶¶ 51-52. In any case, the information that Verizon currently posts does not communicate to CLECs the availability of returned space. Posting information that space is *unavailable*, or that all space has been *leased* to CLECs, at particular central offices provides no indication to CLECs of the actual extent to which space at a central office, although previously leased, has been returned and is available for use by other CLECs at a discount. If Verizon can (and does) post information on its web site regarding collocation space that is unavailable or leased, it should be a relatively simple task for Verizon also to communicate information regarding returned space by such means as posting the information to its web page or by notifying CLECs by e-mail (as it does in the case of change management matters). In addition, to maximize the use of returned space, Verizon should be required to provide quarterly reports to CLECs, and develop methods and procedures to prioritize the re-assignment of space. To date, Verizon has promulgated no written methods or procedures to CLECs regarding the return of collocated space. Thus, there are no established methods and procedures by which CLECs and regulators can determine whether Verizon is using its best efforts to ensure re-use of returned space. Such an omission is a critical deficiency, since Verizon otherwise has every reason to make *no* such efforts (and to require the CLEC that originally leased the space to absorb the full amount of the up-front charges).

volumes electronic billing may experience unanticipated difficulties." *Maryland PSC December 16 Letter* at 6.

Verizon still lacks the ability to provide electronic bills that are both auditable and accurate. For example, although Verizon asserts that it provides wholesale bills electronically in the Billing Output Specification ("BOS") Bill Data Tape ("BDT") format, the BOS/BDT bills are not fully auditable in the three jurisdictions at issue here. In contrast to electronic collocation bills that Verizon issues in the former "Bell Atlantic North" region (such as New York), electronic collocation bills that Verizon issues in BOS/BDT format in Maryland, the District of Columbia, and West Virginia do not contain a "CLLI" code. The CLLI code is the industry-standard identifier universally used to identify network locations, including collocations and associated collocation charges. Thus, using the CLLI code, a CLEC can readily identify – and electronically audit – the collocation charges on the electronic bill.

By contrast, because the BOS/BDT bills in the three jurisdictions at issue contain only an Access Service Group ("ASG") code, not a CLLI code – despite the fact that Verizon requires CLECs in these jurisdictions to provide the collocation CLLI code on orders associated with the collocation (such as orders for augments). Because the ASG code cannot electronically be cross-referenced to the CLLI code, the CLEC must perform that task manually. This *ad hoc* process of manual cross-referencing is difficult and time-consuming, because the CLLI code is typically located deep in the lengthy customer service record ("CSR") portion of the bill. Only through such a manual procedure can the CLEC determine changes or errors in the monthly recurring charges for collocation in the CSR. Yet such a manual search totally defeats the purpose of electronic BOS/BDT

billing – to permit a CLEC "to use computer software to readily audit the data." *New Jersey 271 Order* ¶ 122 n. 348.

Verizon cannot provide any legitimate reason for its failure to provide CLECs in Maryland, the District of Columbia, and West Virginia the ability to audit collocation charges on BOS/BDT bills without manual intervention. Verizon has already demonstrated that it can provide that ability, for CLECs already have it in the "Bell Atlantic North" region. The failure of Verizon to provide that ability on a regionwide basis is a denial of nondiscriminatory access to billing functions.[18]

III. VERIZON DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO UNBUNDLED HIGH CAPACITY LOOPS.

Verizon does not provide nondiscriminatory access to "high capacity" loops (including DS-1 and DS3 loops). As the Maryland PSC found, Verizon enforces a "no facilities" ("no build") policy that "creates a barrier to local competition." *Maryland PSC December 16 Letter* at 3. Under this policy, Verizon rejects orders for high-capacity loops when it "claims no facilities are available and construction is required." *Id.*

[18] Verizon cannot reasonably rely of the third-party review of its wholesale bills by KPMG and PricewaterhouseCoopers ("PWC") as evidence that the collocation charges on the BOS/BDT bills that it issues to CLECs are auditable in the three jurisdictions at issue here. KPMG's review of Verizon's wholesale bills was limited to *paper* bills, not electronic bills. *See, e.g., Virginia 271 Order* ¶ 41 (noting that KPMG had reviewed only paper bills, "due to the recent availability of BOS BDT billing in Virginia"). Moreover, it is unlikely that KPMG examined the accuracy of collocation charges even on the paper bills that it examined, because KPMG's pseudo-CLEC did not place any orders for collocation. There is also no evidence that the review of BOS/BDT bills performed by PWC included an assessment of the accuracy or auditability of collocation charges. *See, e.g.,* Declaration of PWC on Behalf of Verizon West Virginia, Inc. (App. B-WVA, Tab 2), ¶¶ 9, 18, 24, 35, 40, 44, 54 (stating that PWC examined Verizon's West Virginia BDT for transport, the UNE platform, UNE loops, and resale).

Verizon expansively defines the situations that trigger its "no facilities" policy, so that provisioning tasks that Verizon routinely performs in other contexts are defined as "construction" in the context of orders for high-capacity loops by CLECs. As defined by Verizon, "additional construction" includes such routine or minor tasks as installing a repeater shelf in the central office, customer location, or remote terminal; providing an apparatus/doubler case; adjusting the multiplexer to increase its capacity; placing a riser cable or a buried drop wire; or placing fiber or copper cable to replace defective copper cable or provide spare capacity. Verizon will deny a CLEC's UNE DS-1 order on the ground that "no facilities" are available even when all that Verizon would be required to do to provide the requested service is open a cable sheath to splice existing pairs into an existing apparatus case. *Virginia 271 Order* ¶ 141.

Verizon's "no build" policy is patently discriminatory and anticompetitive in a number of respects.[19] First, Verizon's policies are anticompetitive, because they result in a substantial rejection of a number of CLEC orders for high-capacity loops on the ground of "no facilities." Information developed at the various proceedings and workshops in the three jurisdictions involved here showed, for example, that: (1) in Maryland, Verizon rejected more than 20 percent of the UNE DS-1 orders placed by Allegiance in the first five months of 2002, and 48 percent of Allegiance's DS-1 orders in September, on the basis of "no facilities"; (2) in the District of Columbia, Verizon generally rejects between 10 and 30 percent of Allegiance's UNE DS-1 orders on this ground; and (3) 60 percent of FiberNet's EEL DS-1 orders, and 35 percent of StratusWave's UNE DS-1 orders, placed

[19] In addition to its anticompetitive and discriminatory effects discussed herein, the "no build/no facilities" policy precludes a finding that Verizon's rates comply with TELRIC in any of the three jurisdictions at issue here. *See* Part VI, *infra*.

in West Virginia were rejected on the basis of "no facilities."[20] Verizon's policy affects orders placed in other States in Verizon's service region as well.[21] This evidence demonstrates that Verizon's "no build" policy is substantially retarding the growth of competition in the three jurisdictions at issue here, as well as in the Verizon region generally.

Second, Verizon's "no facilities" policy is blatantly discriminatory. Verizon applies this policy only to orders for high-capacity loops placed by CLECs. When orders for high-capacity loops are placed by its retail operations, Verizon will build the necessary facilities – rather than reject the order – when facilities are currently unavailable. Furthermore, Verizon's policy with respect to high-capacity loops is inconsistent with its provisioning policy for other types of loops requested by CLECs. Verizon does not reject orders for loops other than high-capacity loops on the grounds that facilities are unavailable. Verizon's own Application makes clear, for example, that it will perform "construction" for special access services[22] -- even though the construction required to implement such services is similar in nature to the "construction" required to implement high-capacity loops.

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[20] *See, e.g.,* Maryland PSC 271 Proceeding, Tr. 458, 463-464 (Best) (Application, App. B-MD, Vol. 7, Tab 32); D.C. PSC 271 Proceeding, Allegiance Exh. 1 at 3; West Virginia PSC 271 Proceeding, FiberNet Exh. 1 at 10 & StratusWave Exh. 1 at 7; West Virginia PSC 271 Proceeding, Tr. II-86-87 (Irvin), II-164-165 (Wade) (Application, App. B-WVA, Vol. 7, Tab 25).

[21] In Virginia, for example, the Hearing Examiner found that Verizon's policy resulted in rejection of up to 39 percent of DS-1 UNE orders, and that during just a four-month period the DS-1 orders rejected due to this policy would have provided the equivalent capacity of more than 100,000 voice grade circuits in that State. Virginia SCC Case No. PUC-2002-00046, Report of Alexander F. Skirpan, Jr., Hearing Examiner (July 12, 2002) at 117 ("Va. Hear. Ex. Report") at 116.

[22] *See, e.g.,* Lacouture/Ruesterholz MD Decl. ¶ 123 (stating that "The reason it takes longer to provision . . . special access circuits is that Verizon must construct facilities for these circuits").

Because it is limited to CLEC requests for high-capacity loops, Verizon's "no facilities" policy imposes additional procedures and additional costs that neither Verizon's retail operations, nor CLECs requesting other types of loops (including access loops), experience. When a CLEC's order for high-capacity loops is rejected because "no facilities" are available, the CLEC often has little choice but to submit an order (its second order) for special access facilities to serve the customer, because it may lose the customer if it simply waits until facilities become available. Furthermore, even the ordering of special access facilities will increase the installation time beyond the period that would have been required if Verizon simply proceeded to provision the original order (*i.e.,* provisioning or "constructing" the necessary facilities), thereby risking the loss of the customer.[23]

Finally, because the prices charged by Verizon for special access facilities can be as much as five times higher than the recurring costs of a DS-1 loop cross-connect,[24] the

[23] In the Maryland and District of Columbia PSC 271 proceedings, for example, Allegiance testified that Verizon's requirement that a CLEC cancel a UNE order and then resubmit it as a special access order not only increases the installation time, but often had caused Allegiance to lose the customer. Maryland PSC 271 Proceeding, Allegiance Exh. 1 at 4; D.C. PSC 271 Proceeding, Tr. 188 (Best) (Application, App. B-DC, Vol. 6, Tab 13). Verizon attributes the longer provisioning times for special access circuits to the need to construct facilities for these circuits. *See, e.g.,* Lacouture/Ruesterholz MD Decl. ¶ 123. However, the long installation intervals mostly reflect the intervals filed in Verizon's access tariffs – not the realities of construction. In any event, Verizon's excuse highlights its discriminatory willingness to construct facilities for special access but not for high-capacity loops. It also highlights Verizon's failure to maintain adequate facilities even to meet current demand for either high-capacity loops or special-access circuits. If Verizon's existing facilities are inadequate today, the installation periods are likely to be substantially longer in the future, as CLEC entry into the markets in these jurisdictions increases.

[24] The RBOCs' interstate special access rates and revenues have dramatically increased since they were deregulated by this Commission. According to Verizon's own reports to the Commission, Verizon's rate of return from special access in 2001 was 37.08 percent (excluding the NYNEX part of its business), or more than three times the 11.25 percent rate that the Commission previously found to be a reasonable rate of return. *See In the Matter of AT&T Corp. Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services,* RM No. 10593, Petition for Rulemaking (October 15, 2002) at 8. The

CLEC can obtain the lower rate for a DS-1 loop only if it attempts to convert a special access facility back to a UNE facility. To do so, the CLEC must order a termination of the special access facility and then order a UNE or combination of UNEs to replace it.[25] The CLEC, however, cannot convert a particular facility until the minimum period specified by Verizon has passed. Those periods range from 2 months for DS-1 loops to one year for DS-3 loops.

Thus, the "no build" policy requires the CLEC to submit three separate orders, at different times, to obtain the DS-1 loop that it desired – incurring considerable cost and delay in the process. This multiple-step process, and the additional costs for special access circuits, that a CLEC must incur due to the "no build" policy have no basis other than to serve Verizon's anticompetitive interests. Verizon has presented no evidence that its retail operations must follow this procedure. Verizon itself acknowledged in the State 271 proceedings that its "no build" policy is *not* based on a technical impediments, but was solely a policy decision. Maryland PSC 271 Proceeding, Tr. 859-860 (Nogay) (Application App. B-MD, Vol. 9, Tab 36).

Third, Verizon's definition of "new facilities" is inconsistent with the Commission's accounting rules. As the Virginia Hearing Examiner noted, Verizon classifies opening a cable sheath to splice existing cable pairs into an existing apparatus case as "new construction." The Commission's accounting rules, however, state that "Plant Specific Operations Expense accounts shall include the cost of . . . replacing items

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rates of return were calculated from 2001 ARMIS 43-01, Table 1, Cost and Revenue Table, Column S, Rows 1910 and 1915.

[25]Verizon does not dispute that a CLEC has been required to submit a new order for special access circuits, and to subsequently (and separately) request conversion of the special-access loop to a UNE loop, when an order for a high-capacity loop is rejected on the basis of "no facilities." *See, e.g.*, Lacouture/Ruesterholz MD Decl. ¶¶ 235, 319.

of plant other than retirement units; rearranging and changing the location of plant not retired . . ." 47 C.F.R. § 32.5999(b)(3). Therefore, from an accounting perspective, the rearrangement of existing facilities, such as opening a cable sheath to splice existing cable pairs into an existing apparatus case should be accounted for as an expense and not as a capital item. Verizon, however, has made no attempt to reconcile the unbundling and the accounting treatment of such activities.[26]

In short, as the Maryland PSC found only a few weeks ago, Verizon's "no build/no facilities" policy has the "effect of increasing CLEC costs and provisioning intervals which delay the CLECs' provision of service to the end user, and as such creates a barrier to competition." *Maryland PSC December 16 Letter at 3*. The concerns expressed by the Maryland PSC "have been echoed in other Verizon jurisdictions, including Virginia" – where, despite this Commission's recent approval of Verizon's 271 application for Virginia, the Virginia State Corporation Commission has instituted a proceeding to consider the issue. *Id.* at 4.

The Maryland PSC, however, has gone beyond merely expressing "concern" about the issue. Due to its findings regarding the adverse impacts of the "no facilities" policy, the Maryland PSC ordered that when Verizon rejects a CLEC's order due to "no facilities," Verizon must *automatically* convert the order into a special access order and *then* convert the newly-built special access facility back to a UNE after the minimum special access period under the tariff has elapsed. *Id.* Although the changes ordered by the Maryland PSC are welcome (and should have been implemented by Verizon long ago), they do not obviate the currently illegal nature of Verizon's policy. In the first

[26] *See* Va. Hear. Ex. Report at 117.

place, the Maryland PSC's order describes the automatic-conversion process requirement only as a "temporary measure," and Verizon is not required to implement it until April 2003. *Id.* Although Verizon states in its Application that it will comply with the Maryland PSC's requirement, at this stage its commitment is simply a promise to meet its checklist obligation in the future – which, as the Commission has held, is irrelevant to the issue of Verizon's *current* compliance with Section 271.[27] Second, although it has indicated in the ongoing Virginia SCC investigation of its "no build" policy that it would implement on a regionwide basis the single-order, automatic-conversion process ordered by the Maryland PSC, Verizon's Application does not commit to fully implement that process beyond Maryland to the District of Columbia, West Virginia, or any other State in its region.[28]

[27] *See, e.g., Michigan 271 Order* ¶¶ 55, 179.

[28] *See* Application at 38 n.37 & Lacouture/Ruesterholz MD Decl. ¶¶ 121, 235, 314. With respect to West Virginia and the District of Columbia, Verizon's Application states only that Verizon will implement at the end of December a process change in those jurisdictions that will automatically provision a special access circuit if facilities are not available for a high-capacity loop. That, however, is only one of the two types of automatic conversions ordered by the Maryland PSC. Verizon's Application does not promise to implement in these jurisdictions the second type of automatic conversion ordered by the Maryland PSC – *i.e.,* the automatic conversion of special access circuits back into UNE loops after the tariff period has elapsed. *Compare id. with* Lacouture/Ruesterholz D.C. Decl. ¶ 118 & Lacouture/Ruesterholz WVA Decl. ¶ 117. In any event, like its broader commitment with respect to Maryland, however, Verizon's promise to implement changes in the District and in West Virginia at the time of the filing of its Application are irrelevant to the issue of its current compliance with the checklist. Furthermore, Verizon's promised process for automatic provisioning of special access circuits when facilities are unavailable for high-capacity loops is inadequate. Although it would theoretically enable CLECs to avoid the need to submit a separate order for special access, the process would apply only when the CLEC specifically indicated on its Access Service Request that it wished to obtain special access when facilities are not available. *See, e.g.,* Lacouture/Ruesterholz MD Decl. ¶ 121. Thus, if the CLEC did not make this designation on the ASR, it would still receive a rejection notice when facilities were unavailable. Finally, the conversion process that Verizon promises to implement in the District of Columbia and West Virginia will not provide for automatic conversion to UNE pricing once the special access minimum commitment period expires.

For all of these reasons, Verizon does not offer nondiscriminatory access to unbundled high-capacity loops in compliance with the Act and the Commission's rules. The evidence of the high rejection rate experienced in so many States in Verizon's region, together with the patently discriminatory nature of the "no build/no facilities" policy, clearly distinguishes the instant proceeding from previous Commission decisions that declined to find Verizon's policy to be a violation of the checklist. Those decisions were based on the "limited evidence" available before the Commission at that time as to the legality and effect of the policy. *See, e.g., Virginia 271 Order* ¶ 141. However, the record before the three PSCs clearly establishes that Verizon's current policy is highly discriminatory, and constitutes a substantial roadblock to competition.[29]

In its *Virginia 271 Order*, the Commission – although declining to find that the "no facilities" policy violated the checklist on the basis of the evidence in the record – nonetheless expressed concern about the policy. The Commission noted that "there is a potential tension between an incumbent LEC's nondiscrimination obligation and the limitation of unbundling to already-existing facilities." *Virginia 271 Order* ¶ 143. Given the overwhelming evidence of the anticompetitive and discriminatory effects of the "no facilities" policy, there is no longer any doubt as to its illegality. The Commission should

[29] Verizon has asserted that, notwithstanding its "no build/no facilities" policy, it will provide high-capacity loops (and perform the necessary construction) "in certain situations where not all of the necessary facilities are available," even though – under its policy and its expansive definition of "construction" – Verizon is not required to do so. *See*, *e.g.*, Lacouture/Ruesterholz MD Decl. ¶ 118. For example, Verizon suggests that it is willing to insert cards into empty expansion slots in a multiplexer shelf, but will not add a shelf of additional expansion slots if no empty slots are currently available. *Id.*, Att. 7 at 1. If, as Verizon suggests, the "construction" that it currently performs is purely voluntary, Verizon could refuse to perform even those activities in the future, should it decide not to do so. In such circumstances, the anticompetitive and discriminatory effects of its policy would be even greater than the policy as currently implemented.

find that Verizon's discriminatory policy has not satisfied checklist items two (nondiscriminatory access to unbundled elements) and four (unbundled loops).

IV. VERIZON'S DOES NOT PROVIDE DARK FIBER OR EELS IN COMPLIANCE WITH THE CHECKLIST.

Under the Commission's rulings, both dark fiber and enhanced extended links ("EELs") are unbundled network elements that Verizon must provide on a nondiscriminatory basis on terms that are just and reasonable. *See* 47 U.S.C. § 251(c)(2); *UNE Remand Order* ¶¶ 165, 167, 174. Verizon, however, has failed to do so.

A. Dark Fiber

Verizon has frustrated – rather than facilitated – the CLECs' use of dark fiber. For example, before the Commission issued its *Virginia Arbitration Order*, Verizon did not allow CLECs to order dark fiber concurrently with the collocation arrangement in which the dark fiber is to be used. Instead, Verizon required that the CLEC place an order requesting the collocation arrangement (or an order requesting augmentation of the fiber cross-connect facilities in an existing arrangement), and that the arrangement be installed, before the CLEC could order the dark fiber – which required submission of a second order. Because Verizon's standard interval for installation of collocation arrangements is 76 business days,[30] dark fiber that was available when the CLEC ordered the collocation arrangement might be unavailable by the time the arrangement was installed. The CLEC could not prevent this problem from occurring, because Verizon would not permit a CLEC to reserve dark fiber – even though Verizon effectively reserves dark fiber for its own purposes.

[30] Intervals for augmentation of space or power in existing collocation arrangements are at least 45 days.

Recognizing that this "sequential ordering" procedure was both unreasonable and discriminatory, the Commission held in its *Virginia Arbitration Order* that Verizon must allow CLECs to reserve fiber for 90 days after confirmation of a CLEC's request for collocated facilities, and that Verizon must hold dark fiber ordered by CLECs for ten business days after they receive written confirmation of the availability of the fiber. *Virginia Arbitration Order* ¶¶ 460-461. The Commission found that both of these requirements are "[c]onsistent with the nondiscrimination requirement of the Act," because Verizon is able to assign fiber immediately to satisfy the requirements of its retail customers and "as the incumbent, does not signal the fiber that it wishes to use to its competitor through a pre-ordering process." *Id.*

Verizon, however, has not implemented methods and procedures to effectuate its obligations under the *Virginia Arbitration Order*. By itself, this failure puts CLECs at a competitive disadvantage. In addition, the Maryland PSC found last month that Verizon still had not implemented in Maryland the procedure (which it has implemented in Virginia, pursuant to the *Virginia Arbitration Order*) that allows CLECs to order dark fiber ten business days after the CLEC requests a collocation arrangement. *See Maryland PSC December 16 Letter* at 4-5.[31] For that reason, the Maryland PSC specifically directed that Verizon implement this procedure in Maryland. *Id.* at 5. Although Verizon states that in Maryland it will "continue to offer parallel provisioning of dark fiber and

[31] Verizon's implementation of this process in Virginia, but not in Maryland, not only is discriminatory but also evidences the type of bad faith that, according to the Commission, would warrant a finding that Verizon has violated the checklist. *See Virginia 271 Order* ¶ 146 (finding that Verizon's trial agreement with one CLEC for parallel provisioning was a reasonable solution in evaluating Verizon's compliance with the checklist, "[a]bsent evidence that Verizon has engaged in bad faith in conducting the trial").

collocation in compliance with the requirements of the Maryland PSC," it fails to make such an unequivocal commitment for the District of Columbia and West Virginia.[32]

Even if (as Verizon indicates) it has included in its Model Interconnection Agreement provisions which permit parallel provisioning and incorporate the requirements of the *Virginia Arbitration Order,* that is insufficient to prove compliance with the checklist. *See* Application at 44. As previously indicated, the Model Interconnection Agreement is merely an opening offer in the course of negotiations, and is not binding on any party. Verizon has yet to implement methods and procedures to implement these obligations. In addition, the procedures for parallel provisioning that Verizon has incorporated into its Model Interconnection Agreement appear to be unreasonable and burdensome.[33]

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[32] *See* Lacouture/Ruesterholz MD Decl. ¶ 220. With respect to the District of Columbia, Verizon states only that it is "willing to negotiate comparable provisions in interconnection agreement negotiations." Lacouture/Ruesterholz D.C. Decl. ¶ 212. With respect to West Virginia, Verizon cites the Joint Stipulation in West Virginia pursuant to which it is required to "propose terms and conditions for its dark fiber product that implement those rulings on dark fiber" ultimately made by the Commission in the *Virginia Arbitration* proceeding *after* reconsideration, appeal, modification, or final adjudication. Application at 45.

[33] *See*, *e.g.*, Application at 44; Lacouture/Ruesterholz MD Decl. ¶ 220. In its *Virginia 271 Order* the Commission found that Verizon's failure to provide "parallel provisioning" did not violate the checklist because Verizon had agreed to amend its interconnection agreements with other carriers to reflect the availability of a parallel provisioning option. *Virginia 271 Order* ¶ 146 & n.508. The Commission clearly assumed that Verizon's amendments to the agreements regarding parallel provisioning would be just and reasonable. That, however, does not appear to be the case. For example, it appears that, under the parallel provisioning procedures specified in the Model Interconnection Agreement: (1) the CLEC would be required to submit a collocation application, and a separate dark fiber inquiry form; (2) after it received notification that its collocation application had been accepted, the CLEC would be required to submit a request for parallel provisioning; (3) if Verizon accepted the CLEC's request for dark fiber, it would parallel provision the dark fiber to a "temporary location" in Verizon's central office(s); and (4) within 10 days after Verizon completed the collocation application, the CLEC would be required to submit a dark fiber change request to "reposition" the dark fiber from the "temporary location" to the "permanent location" (the collocation arrangement). *E.g.,* Maryland Model Interconnection Agreement, Network Element Attachment, Section 8.2.5.5 (Application, App. P-MD, Tab 2).

Even leaving aside its failure to provide CLECs with reasonable and nondiscriminatory access for the ordering and provisioning of dark fiber, Verizon does not provide CLECs with sufficient information as to what fiber is available and where it can be found. As the Maryland PSC found, "the lack of accessible information from Verizon to CLECs prevents CLECs from identifying and locating existing dark fiber within Verizon's . . . network." *Maryland PSC December 16 Letter* at 4.

Specifically, Verizon requires CLECs to specify with precision the exact fiber end points in order to identify available fiber. Thus, indicating a building in reasonably close proximity is not adequate for Verizon's purposes. The maps that Verizon has provided to CLECs, however, have not contained the network overview of available fiber, including precise termination points, that CLECs need to specify the exact route. Thus, the CLEC must often resort to "guesswork," engaging in a "pin-the-tail-on-the-donkey" search for available fiber using Verizon's incomplete maps. This process is unreasonably burdensome to CLECs and undermines legitimate CLEC attempts to provision fiber to a customer's building. Moreover, the process is discriminatory, since Verizon's retail operations have access to the necessary information.

Because of the inadequacy of the information that Verizon has provided to CLECs, the Maryland PSC ordered Verizon to provide to a CLEC, upon request, central office and all related termination points for all fiber facilities for any office or group of offices at which the CLEC is considering ordering dark fiber. Access to such information, the Maryland PSC found, "will enable CLECs to have access to more accurate information pertaining to the availability of dark fiber on routes where fiber is

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Verizon has provided no justification for subjecting CLECs to such a cumbersome, multiple-request process.

actually installed and will operate to *remove a barrier to competition by improving access to UNEs and the quality of information available to CLECs.*" *Maryland PSC December 16 Letter* at 5 (emphasis added). As in the case of the other requirements imposed by the Maryland PSC, Verizon's Application states that Verizon will meet this requirement in Maryland (a promise that has no relevance to the issue of Verizon's current compliance with the checklist), but makes no commitment that it will do so in the District of Columbia or West Virginia.[34] Thus, there is no assurance that Verizon will provide this information in all three jurisdictions. That, by itself, is sufficient to warrant denial of Verizon's Application.[35]

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[34] *See* Application at 44 n. 41; Lacouture/Ruesterholz MD Decl. ¶ 223; Lacouture/Ruesterholz D.C. Decl. ¶ 211; Lacouture/Ruesterholz WVA Decl. ¶ 209. Verizon's suggestion that it already provides sufficient information to CLECs, even without meeting the Maryland PSC's requirement, is specious. *See* Application at 44 n.41. Although Verizon states that it "makes available serving wire maps showing the streets within each wire center where there are existing fiber cable sheaths and existing fiber" (*id.*), those maps do not currently show central office and all related termination points for all fiber facilities on these maps – as the Maryland PSC recognized. Furthermore, Verizon's reliance on the ability of CLECs to inquire "whether dark fiber is available on a particular route identified by the two end points of the route," and to order an optional Field Survey prior to submitting an Access Service Request, misses the point. *See, e.g.,* Lacouture/Ruesterholz MD Decl. ¶ 223. The information currently provided by Verizon does not always enable CLECs to identify "the two end points of the route." Because Verizon has not indicated how precisely the CLECs must identify the "end points" in making an inquiry about the availability of dark fiber, this option may well be of no value to a CLEC. Moreover, requiring CLECs to make such an inquiry, or to request a Field Survey, in order to obtain the necessary information is unreasonable. Verizon alone possesses the information that is necessary to determine whether dark fiber is available in particular locations. As part of its obligation to provide UNEs on nondiscriminatory and reasonable terms, Verizon is obligated to give CLECs this information without requiring them to follow special procedures or requirements.

[35] Although Verizon claims that it "will look for a reasonable alternative route where the direct route [desired by the CLEC] does not have available dark fiber," its commitment applies only if its interconnection agreement with the CLEC includes provisions for routing dark fiber through intermediate offices. *See, e.g.*, Lacouture/Ruesterholz MD Decl. ¶ 223. Although the Commission cited these provisions regarding alternative routes in its *Virginia 271 Order*, it surely did not assume that Verizon would limit its willingness to look for such routes only to the extent that it had expressly agreed to do so in particular interconnection agreements. *See Virginia 271 Order* ¶ 147. Regardless of whether it has agreed to such provisions, Verizon is obligated to provide a reasonable alternative as part of its overall obligation under Section 251(c)(2), and under Item 2 of the checklist, to provide unbundled network elements on terms and conditions

B. EELs

Verizon's procedures for the ordering of EELs by CLECs are discriminatory and unreasonable, in violation of the checklist. As the Maryland PSC has observed, these procedures create "unwarranted delay and additional costs" for CLECs that are not experienced by Verizon's retail operations – or even by CLECs in some other States. *See Maryland PSC December 16 Letter* at 7. Because CLECs can use EELs when it is uneconomical to collocate at a certain central office (for example, due to the population density of the area intended to be served), the burdens imposed by Verizon's procedures put CLECs at a distinct competitive disadvantage.

EELs generally consist of a combination of an interoffice facility ("IOF"), a loop or loops, and a multiplexer if the IOF and the loop are of different speeds. If the IOF and the loops are of different speeds, Verizon requires the CLEC to submit two separate orders (one for the IOF, the other for the loops) – and assesses two separate order charges against the CLEC. In addition, Verizon requires that the orders be sequential, *i.e.*, the IOF must be completed and "turned up" before the CLEC may submit its order for the subtending loop(s).

By itself, this sequential ordering procedure is cumbersome and unreasonable. Verizon, however, increases the burden on CLECs by charging for the IOF as soon as it is turned up, even though the loops have not yet been ordered, much less provisioned. Even if Verizon rejects subsequent loop order, Verizon requires the CLEC to continue paying for the IOF. These IOF costs can be substantial.[36] Because the intervals for loop

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that are just, reasonable, and nondiscriminatory. CLECs should not be required to bargain in order for Verizon to discharge its obligations under the Act.

[36] Because the IOF is necessarily a higher-capacity circuit, it is more costly to the CLEC than other circuits. The IOF also has associated mileage charges.

provisioning may be as long as 15 days (assuming that the loop is available), the CLEC will incur charges long before it can use the EEL to obtain revenue from its own customer. Stated otherwise, the CLEC will be left with stranded costs for the period during which end-to-end connectivity to the customer was not established. The CLEC will be required to pay stranded costs for the IOF for an even longer period if Verizon completes the IOF but then rejects the CLEC's subsequent loop order on the ground that no facilities are available and that new construction is required.

The delays and additional costs caused by Verizon's procedures put CLECs at a competitive disadvantage with Verizon's retail operations. Unlike CLECs, Verizon is not required to submit orders sequentially in ordering EELs or their functional equivalent for its retail customers – and thus does not face the "stranded costs" problem encountered by CLECs.

The unreasonable and discriminatory nature of the sequential ordering process is demonstrated by the fact that, in some States in its region, Verizon enables CLECS to order all of the components of the EEL simultaneously, and initiates charges for the EEL only when it has been completely provisioned. In Massachusetts, for example, a CLEC may place "related orders" for the IOF and the lower-speed EEL loop at the same time (which, in effect, is a single-order procedure). Thus, in Massachusetts – unlike Maryland, the District of Columbia, and West Virginia – a CLEC does not pay for an EEL unless and until the CLEC has end-to-end connectivity. A similar ordering process

is in place in Rhode Island. The procedures in Massachusetts and Rhode Island demonstrate that the sequential ordering procedure is wholly unwarranted.[37]

The sequential ordering procedure for EELs in Maryland, the District of Columbia, and West Virginia is thus expensive, slow, and inefficient for CLECs. It creates delays for the provisioning of new services to customers, and subjects CLECs to unavoidable stranded costs.[38] Because of the deficiencies in the process, the Maryland PSC recently required Verizon to adopt the simultaneous-ordering process currently used in Massachusetts, and to include such a procedure in its Model Interconnection Agreement "that can be adopted by any CLEC seeking this form of UNE." *Maryland PSC December 16 Letter* at 7. Until Verizon implements this process in all three of the jurisdictions at issue here, it cannot reasonably be found in compliance with the checklist.[39]

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[37] In Massachusetts, although CLECs cannot request for an EEL simply by submitting only one Access Service Request, Verizon was nonetheless able to implement a simultaneous-order process by using a "manual work-around" under which the CLEC submits two separate, but related, ASRs at the same time.

[38] Verizon's lame attempts to defend the sequential ordering procedure are without merit. *See* Application at 46 n.43. Even if, as Verizon contends, its procedures "follow the industry guidelines," the Commission has expressly held that compliance with industry guidelines is not sufficient to establish compliance with the checklist. *See, e.g., Michigan 271 Order* ¶ 142. Furthermore, Verizon's implementation of the simultaneous-ordering procedure in Massachusetts and Rhode Island belies any notion that industry standards preclude it from implementing such a procedure throughout its region. Verizon clearly recognized that there was no need to request a change in industry standards in order to implement the process in those States. Thus, Verizon's criticism of AT&T for not requesting a change in industry standards borders on the frivolous, since no such change was necessary. *See, e.g.,* Lacouture/Ruesterholz MD Decl. ¶ 234. Finally, Verizon's rationalization that the sequential ordering process is required "only in certain limited circumstances" ignores the need of CLECs for EELs when the use of other loops would be uneconomical. There is also nothing in the Act that permits a BOC to impose unreasonable and discriminatory practices on a CLEC as long as it does so "only in certain limited circumstances."

[39] Verizon "has agreed to comply" with the Maryland PSC's order to implement in Maryland the process, although it has not yet implemented the process. Application at 46 n.43; Lacouture/Ruesterholz MD Decl. ¶ 235. Verizon has not committed itself to implement that

V. VERIZON DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO DIRECTORY LISTINGS.

Verizon also does not provide nondiscriminatory access to directory listings in accordance with checklist item eight (47 U.S.C. § 271(c)(2)(B)(viii)). Verizon fails to provide mechanisms for ensuring accurate transmittal and printing of telephone directory entries for CLECs. Verizon's deficient processes have resulted in substantial inaccuracies in the listing of CLEC numbers, and Verizon has not yet demonstrated that those errors have been corrected.

The Maryland PSC recently – and correctly – expressed concern "that directory errors, both white and yellow pages, cause disruption to CLECs disproportionately." *Maryland PSC December 16 Letter* at 8. Indeed, the record of the State 271 proceedings is replete with errors experienced by CLECs in Verizon's region, including jurisdictions that are the subject of Verizon's newest application. In West Virginia, for example, the record showed that serious directory listings errors for CLECs remain "a major unresolved issue."[40] The inaccuracy rate is confirmed by the investigation that Verizon itself conducted in response to complaints about directory listings errors by West Virginia CLECs. As Verizon acknowledges, its own investigation (which was limited to four West Virginia directories) found error rates ranging between 0.67 percent and 1.60 percent. McLean/Webster Decl. ¶ 112. The error rates – which Verizon itself found disturbing -- would have undoubtedly been far higher if Verizon had reviewed only

process in the District of Columbia or West Virginia. *Compare id. with* Lacouture/Ruesterholz D.C. Decl. ¶ 224 and Lacouture/Ruesterholz WVA Decl. ¶ 221.

[40] *See* West Virginia PSC 271 Proceeding, Workshop Supplemental Final Report at 2-3; Final Report at 4-5; Seventh Interim Report at 9-14; Sixth Interim Report at 20 (Application, App. B-WV, vol. 4, Tabs 17, 18, 19, 22).

changes in directory listings, rather than the total number of listings (which included numerous listings for customers that had not migrated to CLECs during the interval).[41]

The evidence submitted in these jurisdictions simply mirrors the similar substantial occurrence of directory listing errors in Virginia, which led the Department of Justice and the Virginia Hearing Examiner in the *Virginia 271* proceeding to "express concern with Verizon's ability to provide non-discriminatory access to white pages." *Virginia 271 Order* ¶ 153. The Commission itself acknowledged in that proceeding that "the record indicates that Verizon has had difficulties in producing accurate and reliable directory listings in the recent past." *Id.* ¶ 156.[42]

Despite its finding, the Commission nonetheless found that Verizon complied with Item 8 of the checklist because – based on the evidence submitted by Verizon – Verizon had "taken steps to remedy these problems" and that such steps were "reasonable actions intended to assure an improvement in the quality of its directory listings." *Id.* ¶¶

[41]Although Verizon's Application characterizes the error rate found in its investigation to be "extremely small," Verizon considered the rates to be of such magnitude that, as discussed below, it "reconsider[ed]" its prior position to CLECs that the LSRC (the confirmation notice returned in response to a Local Service Request, or "LSR") contained all of the information necessary for the CLECs to verify the accuracy of a customer's directory listing. *See* McLean/Webster Decl. ¶ 112; Application at 72-73 n.58..

[42]Verizon suggests that, because AT&T has not submitted any reports of discrepancies in Verizon's Listing Verification Report ("LVR"), either "all of AT&T's listings have been processed correctly" or "AT&T has declined to review the LSR." Application at 71 n.57. *See also* McLean/Webster Decl. ¶ 109. Verizon's suggestion is illogical. Verizon itself describes the LVR as only one of the options that CLECs have to verify the accuracy of directory listings. *Id. See also Virginia 271 Order* ¶ 168 (describing the LVR as "only one additional tool that Verizon makes available as an option to competing carriers"); McLean/Webster Decl. ¶¶ 104-105 (citing completion notices and DLI queries, as well as the LVR, as methods by which CLECs can verify the accuracy of listings information). Thus, the fact that a CLEC submits no reports based on discrepancies in the LVR is not necessarily an indication that the listings are accurate. For example, Verizon's high rates for UNEs have precluded AT&T from entering the residential market in these States on a mass-market basis. As a result, the volume of directory listings of residential AT&T customers (and thus the opportunity for error) in these jurisdictions is relatively limited.

156-164. Recent admissions by Verizon, however, show that it still lacks the ability to provide accurate directory listings.

Verizon's evidence of its "actions" suggested that it had designed its processes to ensure the accuracy of directory listings at any stage of its ordering and provisioning processes from the time Verizon's OSS accepted the CLEC's LSR and returned a confirmation notice (the LSRC) to the CLEC. Thus, in its Application to this Commission for Section 271 authority in Virginia, and in the Section 271 proceedings before the Maryland PSC, Verizon stated that the LSRC should contain all of the information that the CLEC needed to verify the accuracy of the customer's directory listing.[43] In its newest Application, however, Verizon states that it has "reconsider[ed]" its advice to CLECs regarding LSRCs – in the face of the rate of errors in directory listings that it discovered in its West Virginia investigation. Verizon now advises CLECs that, rather than use the LSRC, they should use its Directory Listing Inquiry ("DLI") transaction "to verify listings *after the completion step*," as evidenced by the Billing Completion Notice ("BCN"). McLean/Webster Decl. ¶ 112 (emphasis added). "Most importantly," Verizon suggests that the CLECs *also* use the LVR as "the final verification step before publication" of the directory. *Id.*

Thus, in contrast to its position in the *Virginia 271* proceeding, Verizon has abandoned its reliance on the LSRC – and effectively admits that its processes are inadequate to ensure the accuracy of directory listings at *any* stage of its processes, even

[43] *See Application by Verizon Virginia for Authorization to Provide In-Region, InterLATA Services in Virginia*, CC Docket No. 02-214, at 61 (filed Aug. 1, 2002), and McLean/Wierzbicki/Webster Decl. ¶ 108 (describing the LSRC as a means by which CLECs can verify their customers' listings prior to publication); Maryland PSC 271 Proceeding, Tr. 1036-1037 (Oct. 30, 2002) (Testimony of Michael Toothman) (Application, App. B-MD, Vol. 9, Tab 36).

after the order has been completed. Instead, Verizon foists on the CLECs the burden of determining Verizon's errors in the listings and reporting them to Verizon for correction. In the face of Verizon's "reconsideration," the Commission cannot reasonably find that Verizon currently has adequate processes in place to verify the accuracy of directory listings.[44]

Even leaving aside the inadequacies of its own processes for verifying the accuracy of directory listings, the Directory Listing Inquiry that Verizon now recommends imposes an unreasonable, and potentially costly, burden on CLECs. The DLI can only be used one order at a time. For example, if a CLEC has 1,000 orders and wishes to verify the accuracy of the listings in each order, it must "dip" into the DLI database 1,000 times. Such a procedure would require the CLEC to expend substantial time and costs.[45]

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[44] Verizon asserts that it "reconsidered" its prior advice to CLECs because CLECs "appear[ed] to contribute to the problem rather than solve it," given that CLECs were "reviewing and modifying their listings simultaneously with Verizon at the time of the order confirmation process." Application at 72-73 n.58; McLean/Webster Decl. ¶ 112. Verizon's attempt to "blame the CLECs" for its error problem is disingenuous. Verizon previously advised the CLECs to verify the accuracy of listings by using the LSRC – and made clear that CLECs could take action at that stage of the process to correct the error. Having belatedly recognized the inadequacies of its processes – which it designed – Verizon cannot plausibly fault the CLECs for having used them. Verizon is simply attempting to avoid responsibility for its inadequate processes.

[45] Reviewing the LVR, which Verizon describes as the "final" and "most important[]" verification step for CLECs (McLean/Webster Decl. ¶ 112), is as unreasonable as the use of the DLI. In essence, Verizon is seeking to require the CLECs to verify the accuracy of listings *twice* – once through individual DLI queries and once through the LVR (which is reviewed on a line-by-line basis) – to determine whether Verizon has committed errors on the listings. The LVR process shifts to the CLECs almost the entire responsibility of verifying Verizon's inputs into its directory listings databases, because Verizon only checks that these databases comport with the data that Verizon Information Systems ("VIS"), Verizon's directory affiliate, maintains in its own database. Thus, if data has been incorrectly entered into (or omitted from) Verizon's database, such errors will not be caught by Verizon's verification processes. Furthermore, even a review of the LVR by a CLEC will not ensure that the directory listings, as published, will be accurate. Verizon has acknowledged that even if a CLEC received and reviewed the LVR 30 days prior to the publication date, subsequent activity could incorrectly alter the listing.

The CLEC's costs in using the DLI could be even more substantial if Verizon enforces the per inquiry (per dip) charge in its interconnection agreements. which ranges from $0.24 to $0.27 for each "pre-ordering" inquiry such as the DLI.[46] Although Verizon has stated that it had not levied this charge, it has also refused to commit that it would not assess this charge against CLECs for future DLI queries, or back-bill CLECs at some future date for past DLI usage, which could be substantial.[47] Recognizing the inconsistency between the terms of the Model Interconnection Agreement and Verizon's assertion that it does not assess a charge for DLI usage, the Maryland PSC ordered Verizon to amend the agreement "to indicate that no charges apply," and prohibited "Verizon from instituting such a charge unless [Verizon] first obtains the approval" of the Maryland PSC. *Maryland PSC December 16 Letter* at 8.

Maryland PSC 271 Proceeding, Tr. 1048 (Toothman) (Application, B-MD, Vol. 9, Tab 36). Finally, use of the LVR is costly and burdensome for a CLEC, because it requires the CLEC to hire additional employees to review the LVR errors – a task that the CLEC may have only 30 business days to complete before the directory goes to the printer. *See id.* ¶ 105 (stating the Verizon sends the LVR to CLECs "at least 30 business days prior to directory close"). This is plainly discriminatory, because Verizon's own retail operations simply feed directory listing information for retail customers directly into a system that has real-time edits and interaction with Verizon's back-office systems. Thus, the retail operations do not (and need not) review the LVR. *See* Maryland PSC 271 Proceeding, Tr. 1052-53 (Toothman) (Application, App. B-MD, Vol. 9, Tab 36).

[46]AT&T's interconnection agreement with Verizon, as proposed by Verizon in November 2002, contains a per-inquiry charge of 24 cents. Verizon's Model Interconnection Agreement contains a per-query charge of 27 cents. By contrast, Verizon does not assess any charge against CLECs for the return of an LSRC.

[47]*See* testimony of Kathleen McLean in Maryland PSC 271 Proceeding (Tr. 1065-1066 (Application B-MD, Vol. 9, Tab 36), in D.C. PSC 271 Proceeding (Tr. 330-333), and West Virginia PSC 271 Proceeding (Tr. I-119-123) (Application, App. B-WV, Vol. 6, Tab 24). Notwithstanding its reliance on KPMG's third-party testing as proof that its bills are accurate (Application at 94), KPMG did not uncover the fact that Verizon was not charging CLECs in their bills for DLI usage, even though such charges were called for by Verizon's interconnection agreements.

In its Application, Verizon suggests that it will remove the per-query charge for DLI in Maryland – but, significantly, makes *no* commitment to do so in the District or Columbia or West Virginia.[48] Furthermore, even as to Maryland, Verizon makes no commitment that it will not attempt to recover its costs for DLI queries in some other form, as by including it in the per-line charge for overall usage.[49]

As the Commission has stated, "irregularities involving the white pages are a very serious matter because customers may tend to blame the new competitor, rather than the familiar incumbent, for mistakes." *Texas 271 Order* ¶ 358. The adverse competitive impact on CLECs from such errors is exacerbated "[b]ecause white pages listings cannot be changed for an entire year after a directory has been published." *Virginia 271 Order* ¶ 153. Verizon, however, does not have adequate processes in place to verify the accuracy of directory listings, but instead imposes on the CLECs the burden of detecting errors through a burdensome, costly procedure. In view of these facts, the frequent occurrence in directory listings due to Verizon's flawed processes, and Verizon's shifting position regarding the ability of CLECs to verify the accuracy of such listings, the Commission should find that Verizon has not satisfied Checklist Item 8.

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[48] *Compare* Roberts/Garzillo/Prosini Decl. ¶ 81 (discussion of Maryland PSC's requirement) *with* Given/Garzillo/Sanford Decl. (no discussion of DLI or per-order query charges or charge for DLI) and Johns/Garzillo/Prosini Decl. ¶ 61 (discussing only Verizon's "policy decision" not to apply per-query charge for DLI usage).

[49] *See*, *e.g.*, West Virginia PSC 271 Proceeding, Tr. I-120-121, 123, 127-128 (McLean) (Application, App. B-WV, Tab 24) (stating Verizon's desire to recover costs for all pre-ordering transactions on a per-line basis, rather than on a "per-dip" basis, although "not necessarily specifically," DLI transactions); DC PSC 271 Proceeding, Tr. 332 (McLean) (Application, App. B-DC, Vol. 6, Tab 14 (stating understanding that Verizon is "seeking a per line recovery for that OSS cost").

VI. PRICING ISSUES

A. Verizon's Loop Rates In the District of Columbia Violate TELRIC And Do Not Benchmark With New York.

The currently effective rates in the District of Columbia "are based on the FCC proxy rates."[50] are "interim" rates based on the proxy rates set by the Commission in its Local Competition Order in 1996, based on data of an even earlier vintage. The provision of the Local Competition Order permitting state commissions to base UNE prices on the Commission proxy rates was overturned by the Court of Appeals in 2000. *Iowa Utilities Board v. FCC*, 2129 F.3d 744, 756 (8th Cir. 2001). The DC PSC adopted the proxy rates without making any finding that they were TELRIC compliant, and the PSC has subsequently made clear that they are not. "Because the District of Columbia's interim rates are based on the FCC proxy rates, they must be replaced by the Commission with permanent TELRIC-compliant rates."[51]

On December 6, 2002, in Order No. 12610, the DC PSC issued an order replacing Verizon's long-standing "interim" rates its network elements with permanent rates—most of them levels far below those of the interim rates.[52] "We believe that District of Columbia ratepayers will be harmed by allowing any further delay" in replacing the interim rates with lower permanent rates, the PSC added. "[O]ur adoption of final UNE rates is critical to the future of local telecommunications competition in the District."[53]

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[50] *In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, DC PSC Formal Case No. 962, Order No. 12610 (Dec. 6, 2002) ("DC PSC Order No. 12610") ¶ 98.

[51] *Id*.

[52] *Id*.

[53] *Id*. ¶ 21.

Verizon, however, has refused to implement the new rates. On January 3, 2003, Verizon filed a 135-page "Application for Partial Reconsideration and Clarification of Order No. 12610."[54] Under District of Columbia law, the filing of such a petition automatically stays the effectiveness of the PSC's rate reduction order, thus leaving the "interim" proxy rates in effect.[55] The obvious choices for Verizon at that point would have been to (1) waive the automatic stay and allow the TELRIC-compliant rates prescribed by the DC PSC to take effect, or (2) withdraw its 271 application for the District until the matter is resolved. Verizon, however, followed neither course.

Instead, it announced in its application that it would unilaterally "offer" a new set of UNE rates in the District that purportedly benchmarked with Verizon's UNE rates in New York. The "New York" loop rate proposed by Verizon was *nearly double* what the PSC had just found reasonable, and the port rate was *more than double*. Verizon's self-selected end office switching rates were *eight to nine times* what the PSC ordered, and the tandem switching rate was *more than 23 times higher*.

On January 6, 2003, the DC PSC ruled that these unilateral "New York" rates were ultra vires and illegal. Section 34-601 of the D.C. Code, the PSC noted, "prohibits a public utility from changing rates without the approval of the Commission."[56] Verizon's choices under DC law, the PSC concluded, are to "(1) implement the rates approved in Order No. 12610; (2) petition the Commission for new rates; or (3) request that the

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[54] *See* Ex Parte filing by Verizon dated January 7, 2003 (submitting copy of Application for Partial Reconsideration).

[55] D.C. Code, 2001 Ed. § 34-604(b); *see also In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, DC PSC Formal Case No. 962, Order No. 12626 (Jan. 6, 2003) ("DC PSC Order No. 12626").

[56] *Id*. ¶ 5 n. 7.

approved rates not be stayed."[57] "In no event is Verizon DC authorized to use rates established in New York, benchmarked or otherwise."[58] Verizon, to date, has followed none of these options. Accordingly, "by application of law, the applicable rates" remain "the rates that were in effect prior to the issuance of Order No. 12610."[59]

The effect of Verizon's 11th-hour brinkmanship is to leave in place rates that clearly violate the 271 competitive checklist. As noted above, those rates were never found to be TELRIC compliant; were based on Commission proxy rates that were struck down by the Eighth Circuit several years ago; and were specifically found by the DC PSC to exceed TELRIC-compliant levels only a month ago. Moreover, Verizon's existing rates cannot be upheld by benchmarking with NY: Verizon's currently effective loop rates flunk the benchmark comparison by a margin of over 20 percent.[60] Under the circumstances, Verizon's 271 application for the District of Columbia must be rejected for this reason alone.

B. Verizon's No Build/No Facilities Policy For Provisioning Loops Precludes Any Finding That Verizon's Loop Prices In Maryland, the District of Columbia or West Virginia Comply With TELRIC.

Verizon's no build/no facilities policy, discussed in Section III, above, also precludes a finding that Verizon's rates comply with TELRIC in any of the three jurisdictions. The loop cost studies submitted by Verizon and adopted by the public

[57] *Id*. ¶ 5.

[58] *Id*. ¶ 1.

[59] *Id*. ¶ 5.

[60] The 11th-hour maneuverings by Verizon that resulted in the continued effectiveness of the 1996 "interim" rates within the past few days occurred too recently to enable the submission of a formal benchmark and TELRIC analysis of those rates in time for today's submission. As discussed with the Commission staff, AT&T will submit an ex parte with supporting analysis of these matters in the next few days.

service commissions in Maryland, Washington, DC, and West Virginia all contained growth and fill factors, assumptions that multiple vintages of investment would occur, and assumed expenditures for rearrangement and reconfiguration of the outside plant. The fundamental assumption underlying these inputs was that Verizon would expand its network to accommodate forecasted growth in demand. Baranowski Decl. ¶¶ 9-13. Adjusting the loop cost studies to eliminate the inputs and assumptions that contradict Verizon's no-build policy would produce a considerable reduction in loop costs. Baranowski Decl. ¶ 14.

For the foregoing reasons, Verizon's no-build policy is inconsistent with the inputs and assumptions of the underlying cost studies. It is a violation of the causation element of TELRIC to charge UNE prices that attribute to UNEs the costs of capacity and other costs that are not caused by the provision of those UNEs. Correcting for these inconsistencies would result in a substantial reduction in loop rates.[61]

C. Verizon's No Build/No Facilities Policy For Provisioning Loops Precludes Any Finding That Verizon's Loop Prices In Maryland, the District of Columbia or West Virginia Pass A Benchmark Comparison With New York.

The Commission has in previous Section 271 cases involving Verizon accepted its New York UNE rates to determine whether its UNE rates in the application states are within a range that a reasonable application of TELRIC principles would have

[61] It is important in this regard to underscore that Verizon's discriminatory provisioning policy extends to ordinary voice-grade loops, not just DS3 or DS1-grade loops, as made clear in an exchange of correspondence between the Virginia SCC and Verizon concerning Verizon's failure to provision voice-grade loops for Cavalier in Virginia. *See Virginia 271 Proceeding*, letter dated Aug. 30, 2002 from William Irby (Virginia SCC) to Robert W. Woltz, Jr. (Verizon); *Virginia 271 Proceeding* Sept. 6, 2002 reply from Mr. Woltz to Mr. Irby.

produced.[62] Verizon's no build/no facilities provisioning policy precludes the Commission from finding that Verizon's loop rates in Maryland, Washington, DC, or West Virginia benchmark with Verizon's New York rates.

A necessary precondition for a meaningful benchmark comparison is that the services whose rates are compared must cover comparable facilities or services. Verizon's current provisioning policy, however, renders a "loop" clearly a less costly and value input than the Commission and the New York Public Service Commission understood Verizon to be providing during the New York 271 proceeding. In the New York proceeding, the purchase of a loop by a CLEC was thought to include the implicit right to be additional loops at the same price. Under Verizon's current provisioning policy in the three jurisdictions at issue here, there is no comparable right.[63]

The option of supplying additional loops on demand has both a cost to Verizon (i.e., the carrying cost of the spare capacity, measured by fill factors, needed to make the availability of additional loops a meaningful one) and a value to CLECs. Hence, a simplistic benchmark comparison of loop prices in DC, Maryland, or West Virginia with loop prices in New York is as illegitimate as the proposition that price of a kilowatt hour of electricity supplied under an interruptible supply contrast is a valid benchmark for the price of the same quantity of electricity supplied under a firm supply contract.[64]

Verizon's rejoinder that its change in provisioning policy occurred simultaneously throughout the Verizon region, while perhaps true, is completely beside the point.

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[62] *See, e.g.,* New Jersey 271 Order ¶¶ 49-55; Vermont 271 Order ¶ 26; Rhode Island 271 Order ¶ 39.

[63] Baranowski Decl. ¶ 7.

[64] Baranowski Decl. ¶ 8.

Whether or not Verizon had already implemented its newly restrictive provisioning policy in New York when the New York PSC set Verizon's loop rates in New York, and the FCC uphold those rates as TELRIC-compliant in the New York 271 case, nothing in the record suggest that the two tribunals were aware of the new policy. They certainly made no such findings.[65] Whether Verizon's loop provisioning policies in New York and elsewhere in the region changed in tandem, the loop provisioning policies now enforced by Verizon in the region are clearly at odds with the loop provisioning policies that the Commission and the SCC *believed* to apply in New York when the New York cases were decided. Hence Verizon's rates in New York were set and upheld on assumptions that can no longer apply to Verizon loops in the region.[66]

The Commission's assumption that the New York PSC must have taken Verizon's current loop provisioning policy into account when setting Verizon's current New York loop rates because Verizon's facilities policy was publicly known by at least July 2001[67] is unsupportable. The recommended decision in the New York UNE case issued on May 16, 2001—more than *two months before* July 24, 2001, when Verizon first

[65] *See New York 271 Order* at ¶ 289 (finding no evidence to support claim that Verizon was "unable to provision high quality loops such as DS1s in a timely manner"); *id*. ¶ 280 ("Bell Atlantic presented sufficient evidence to demonstrate that it provisions loops in the quantities that competitors reasonably demand, at an acceptable level of quality, and within a reasonable timeframe"). There is nothing in the subsequent Phase II UNE decisions of the New York PSC and its hearing examiner to suggest that the current New York rates reflect any changed understanding of Verizon's loop provisioning policies.

[66] Verizon's claim that "in neither state does the UNE rate for one loop entitle a CLEC to one or more additional loops at no additional cost, as AT&T appears to suggest is the case in New York" (*Virginia 271 Proceeding*, Verizon ex parte at 6) misstates AT&T's position. AT&T does not contend that additional loops in New York were or are free, but only that a CLEC was believed to have a reasonable expectation of having Verizon honor requests for the provisioning of additional loops on the same terms and conditions (including unit price).

[67] *Virginia 271 Order*, at ¶ 95.

published a reference to its provisioning policy on the company's website.[68] Moreover, there is nothing in the record to suggest that the website page—or the filings of any party in the rate case—alerted the New York PSC to the existence of Verizon's new provisioning policy before January 28, 2002, when the PSC issued its final decision on exceptions. And there is no indication that anyone other than Verizon realized until much later how radical Verizon's change in policy would be.

In its decision of January 28, 2002, the New York PSC affirmed the recommendation of the Administrative Law Judge to include in loop rates the costs of spare capacity sufficient to accommodate "the net present value of the ten-year average demand, assuming annual growth of 3%--the midpoint of the 2% to 4% annual growth that Verizon envisioned."[69] And the resulting fill factors upheld by the PSC—including a fill factor of 50 percent for copper distribution cable, or one spare loop for every loop in use—clearly implied the stockpiling of large amounts of spare capacity for future growth in lines.[70] Even Verizon's semantic somersaults over the supposed difference between loops installed for future "growth" and loops held in reserve for "providing quality service in Virginia" (*Virginia 271 Proceeding*, CC Docket No. 02-214, Verizon ex parte filed October 28, 2002, at 7) cannot explain away the enormous gulf between the amount of spare capacity that the New York PSC assumed that Verizon was holding in reserve in New York, and what the CLECs are now actually getting in the region. If Verizon is

[68] *See Virginia 271 Proceeding*, CC Docket No. 02-214, AT&T Oct. 22 ex parte at 6 & n. 19.

[69] New York PSC Case 98-C-1357, *Proceeding on Motion of the Commission to Examine New York Telephone Company's Rates for Unbundled Network Elements*, Order on Unbundled Network Element Rates (Jan. 28, 2002) at 96-98.

[70] *Id*. at 98-101.

correct that its change in provisioning policy has been regionwide, then that simply demonstrates that the provisioning bait-and-switch has occurred on a regional scale.

D. Verizon's Switching Prices In West Virginia Violate Basic TELRIC Principles, And Do Not Benchmark With New York.

Verizon's prices for unbundled switching usage in West Virginia also suffer from a basic TELRIC violation. The Verizon switch usage rates adopted by the West Virginia PSC are the sum of usage rates determined by the Hatfield Model *plus* a separate charge for vertical features based on Verizon's vertical feature add on cost study methodology. The PSC reached this solution because it was unconvinced that the Hatfield Model switch usage rates included costs for vertical features activations and thus allowed Verizon to add its feature costs to the Hatfield usage rates. The Hatfield Model switch costs, however, were based on historical (publicly available) switch purchase data and thus reflected include the costs for complete switches (including vertical features). Thus, adding a separate charge for vertical features produces a double recovery of those costs.[71]

Further, even if such a hybrid methodology were appropriate—which it is not—Verizon's development of vertical feature cost uses a switch discount weighted entirely on the lesser discount available on the purchases of growth equipment instead of the steeper forward-looking discounts available for replacement switch purchases. This assumption is directly at odds with the switch cost assumptions underlying the usage component of the switch rate from that Hatfield Model which, because they are based on historical purchases of new switches, implicitly incorporate the discount level attributable to new switch purchases. Such a mismatch of discount levels within a single UNE switch usage rate is a clear violation of TELRIC principles. Correcting the West Virginia switch

[71] Baranowski Decl. ¶¶ 3-4.

usage rate to reflect only the steeper discounts available on replacement equipment purchases would reduce switch rates and the amount of the over-recovery substantially.[72]

The impact of these errors is very large: features charges represent over 59 percent of the total combined rate element for terminating usage and features combined, and nearly *84 percent* of the total combined rate element for originating usage and features combined:[73]

Verizon's excessive switching usage prices in West Virginia cannot be excused by benchmarking those prices with their counterparts in New York. On a cost-adjusted basis, Verizon's switching and other non-transport non-loop rates in West Virginia exceed those in New York by 30 percent—i.e., by $1.79 per subscriber per month. This is an enormous disparity—approximately four times the disparity in Virginia. *See* Lieberman Decl. ¶ 6.

The Commission, in its recent Virginia 271 order, disregarded similar evidence on the ground that Verizon's non-loop rates in Virginia satisfied a benchmark comparison with Verizon's New York non-loop rates in the aggregate. AT&T respectfully urges the Commission to reconsider its position.

The Commission may not lawfully approve Verizon's 271 application without specifically finding that Verizon's switching rates are just and reasonable. The Commission may not avoid this obligation merely because some larger combination of

[72] Baranowski Decl. ¶ 6.

[73] Baranowski Decl. ¶ 5.

UNEs, of which switching is only a subset, have a lower rate-to-cost ratio than the corresponding bundle of UNEs in New York.

These propositions are rooted directly in Section 271. Section 271(d)(3)(A) entitles a Bell operating company like Verizon to begin providing in-region interLATA service only if the Commission finds (among other things) that the company has satisfied the competitive checklist set forth in Section 271(c)(2)(B). The second item in the checklist, Section 271(c)(2)(B)(ii), requires that the Bell company provide "[n]ondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)." And Section 252(d)(1) in turn requires that the charge for a network element be "just and reasonable" and "based on the cost . . . of providing the . . . network element." 47 U.S.C. § 252(d)(1) (emphasis added).

Moreover, recognizing the separate competitive potential of unbundled switching and unbundled transport, Congress specifically required that each be offered separately, unbundled from the other. Competitive checklist item five requires Bell companies to offer "[l]ocal transport from the trunk side of a wireline local exchange carrier switch *unbundled from switching or other services*." 47 U.S.C. § 271(c)(2)(B)(v) (emphasis added). And competitive checklist item six requires Bell companies to offer "[l]ocal switching *unbundled from transport, local loop transmission, or other services.*" *Id.* § 271(c)(2)(B)(vi) (emphasis added). The competitive potential of unbundling switching and transport will remain stillborn, however, unless each element can be ordered an appropriate separate price. Hence, "TELRIC prices are calculated on the basis of

individual elements." *Verizon Communications Inc. v. FCC*, 122 S.Ct. 1646, 1678 (2002) (emphasis added).[74]

Unlike the just and reasonable pricing standard prescribed in Section 251, 252 and 271, the Commission's benchmarking policy appears nowhere in the 1996 Act. Rather, it is a Commission invention, adopted purely for administrative convenience. This administrative policy encompasses two shortcut presumptions. First, network elements in a particular state will satisfy the statutory cost standard if (a) the same carrier's prices for network elements have been found to satisfy the cost standard in another state, and (b) the rate-to-cost ratios of the carrier's prices in the state at issue do not exceed the corresponding ratios in the state where the Commission has already made a direct determination of the carrier's costs (with the relative costs in the two states based on Commission runs of the Synthesis Model in both states). *See, e.g., KS/OK 271 Order* ¶¶ 82-89; *PA 271 Order* ¶¶ 62-66; *Rhode Island 271 Order* ¶¶ 37-58. Second, if the non-loop rates satisfy a benchmark comparison in the aggregate, each of the individual network elements within this group will be presumed to satisfy a benchmark comparison individually. *Rhode Island 271 Order* ¶ 40; *New Jersey 271 Order* ¶ 52.

There is nothing per se unlawful about these presumptions. Evidentiary shortcuts of this kind are common in administrative adjudication, and AT&T does not suggest that the Commission lacks authority to use such presumptions in appropriate circumstances. Where the record provides a plausible reason to believe that Commission-made presumptions are likely to produce misleading results in a particular case, however, rigid

[74] *See also AT&T Corp. v. Iowa Utilities Board*, 525 U.S. 366, 394 (1999) ("The dictionary definition of 'unbundled' (and the only definition given, we might add) matches the FCC's interpretation of the word: 'to give separate prices for equipment and supporting services.'").

adherence to the presumptions when the results are at odds with the underlying statutory requirement is arbitrary and capricious. Those are the precise circumstances here.

The record in this case makes clear that mechanical application of the Commission's non-loop benchmarking approach in lieu of directly scrutinizing the reasonableness of Verizon's switching costs would be arbitrary and capricious. As explained by AT&T in the recent New Hampshire/Delaware 271 case, the Synthesis Cost Model—the model used by Verizon and other CLECs to adjust for relative cost differences between the anchor state (here, New York) and the comparison state (here, Maryland, the District of Columbia, and West Virginia) tends to overstate transport costs, and overstate transport costs disproportionately as line density declines.

Exhibit 2 illustrates this point graphically. The exhibit compares the estimates of Verizon's transport costs generated by the Synthesis model for each state in the Verizon South territory (plus New York) with the UNE prices actually set by state commissions in each state.[75] As the exhibit shows, the estimates of transport costs generated by the Synthesis Model, while roughly comparable to commission-prescribed transport prices in the higher density states, climb dramatically above the latter values in the lower density states. Because Verizon's service area in West Virginia has a lower density of population (and thus lines) than Verizon's service area in New York, the problem squarely arises here as well.

[75] To assure comparability, in computing the per-line UNE prices, we assumed the same volumes as assumed in the Synthesis Model. Needless to say, AT&T does not contend that the transport UNE prices set by state commission are themselves TELRIC compliant; to the contrary, a number of those prices exceed TELRIC levels as well. Nevertheless, those prices are the best available indicator of state-specific transport costs for an analysis of this kind, and they provide a clear qualitative demonstration of the inverse relationship between line density and the overstatement of transport costs by the Synthesis Model.

There are, in theory, three possible remedies for this problem. One is to identify and solve the apparent defect in the transport cost module of the Synthesis Module. As all parties agree, however, that remedy is beyond the scope of this proceeding.

The second alternative is to consider a switching-only benchmark analysis as well an aggregate non-loop analysis (which would eliminate the taint of the inflated transport cost estimates on the benchmarking analysis for switching). As shown in the attached declaration of Michael Lieberman, a switching-only benchmark analysis demonstrates that Verizon's switching prices in West Virginia still exceed Verizon's switching prices in New York, on a cost adjusted basis, by a substantial margin.[76]

The third alternative is to consider the evidence submitted by the parties on the *ultimate* pricing issue: whether the non-transport non-loop rates (of which switching is the most important) were set in compliance with TELRIC. AT&T has submitted evidence pursuant to this alternative as well. As summarized above, this evidence demonstrates that Verizon's switching prices still exceed just and reasonable levels.

Verizon's position is that, because alternative 1 is infeasible, the Commission should ignore alternatives 2 and 3 as well. AT&T respectfully submits that this position is both illogical and legally indefensible, and the Commission's analysis of the issue has failed to come to grips with the reasons why.

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[76] Significantly, even other incumbent local exchange carriers have begun to recognize the usefulness of a separate switching-only benchmark. *See* WC Docket No. 02-314, *Qwest Communications International Inc. Application for Authority to Provide In-Region InterLATA Services in Colorado, etc.*, Ex Parte letter dated Oct. 7, 2002, from David L. Sieradzaki (Qwest) (submitting switching-only benchmarking analysis of Qwest rates in Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, and Wyoming).

First, the notion that the issue is moot or merely "form over substance" because CLECs do not currently buy unbundled switching separately from unbundled transport and other non-loop elements (*Virginia 271 Order* at ¶¶ 53-54) ignores the reality that the density-related overstatement of transport costs by the Synthesis Model overstates the *aggregate* costs of non-loop elements in the lower density states, and therefore understates their *aggregate* rate-to-cost ratios. The flaw in the transport module of the Synthesis Model—a tendency to overstate transport costs, and to overstate them more in states with lower population density—exaggerates relative costs in lower density states, and under-states their cost-adjusted rates, for the non-loop elements in the aggregate, *not just switching alone*. A benchmark analysis of aggregate nonloop costs that relies on Synthesis Model data on the cost differences vis-à-vis New York allows Verizon to inflate the cost of competitive entry in states with lower population densities *even for CLECs that never buy switching separately from the other nonloop elements*. CLECs thus are aggrieved by this error regardless of whether they ever buy any unbundled switching separately from other non-loop elements.[77]

Second, the existence of the "extensive record" developed in the rulemaking proceeding leading to the adoption of the Synthesis Model provides no justification for relying on the model in particular circumstances where it is demonstrably ill-suited. The purpose of the rulemaking proceeding that led to adoption of the Synthesis Model was for universal service subsidy calculations, in which relative differences in transport costs play a relatively small part.[78]

[77] *See* Lieberman Decl. ¶ 21.

[78] *See* Lieberman Decl. ¶ 19 .

Nor can inflexible reliance on an aggregate non-loop benchmark analysis be justified on the theory that the Synthesis Model is "the best tool we have for evaluating cost differences between states." *Virginia 271 Order* ¶ 104. When the Commission has the alternatives of (1) using the Synthesis Model to perform a comparison of the *switching*-only costs, and (2) considering the record evidence that bears directly on whether Verizon's switching rates in West Virginia are TELRIC-compliant, mechanical application of the Synthesis Model to compare all non-loop costs in the aggregate is clearly *not* the best available tool in the particular circumstances here.[79]

Equally illogical is the proposition that an aggregate non-loop benchmark analysis must serve as an unrebuttable rule of decision in all cases because, "in the context of universal service, AT&T has supported the Synthesis Model before the Commission and before the appellate courts," *id*. AT&T has clearly expressed concerns that the Model provides a conservative -- indeed, overstated -- measure of the costs of transport.[80] Likewise, while the Commission has found that the Synthesis Model "accurately reflects the relative cost differences among states," the Commission has never found that it produces accurate cost estimates for the pricing of transport UNEs.[81]

It is Verizon, not AT&T, that is guilty of inconsistency on this issue. Just a few months ago, in the Virginia UNE arbitration that remains pending before the Commission, Verizon assailed the Synthesis Model (including its transport module) as

[79] *See* Lieberman Decl. ¶ 19.

[80] *Id*., Lieberman Decl. ¶ 17.

[81] *See id*., Lieberman Decl. ¶ 16; *Federal-State Joint Board on Universal Service*, Fifth Report and Order, 13 FCC Recd 21323 (1998) ("Platform Order"), ¶ 75.

"incapable of estimating company- and state-specific UNE rates with any accuracy."[82] The Model, Verizon added, "is not designed to model, nor can it be modified to account for, the costs of the full and robust network that is the focus of UNE proceedings."[83] The "underlying platform" of the Model "prevents it from accurately measuring the forward-looking costs that Verizon VA or, for that matter, any efficient carrier, would incur in providing the full range of UNEs required by the Commission."[84] Verizon has never retracted these criticisms. Indeed, in the Virginia UNE arbitration, Verizon supports estimates of transport costs that are only *one third* as high as the estimates obtained by AT&T from the Synthesis Model.[85]

The Commission's observation that "re-examination of the Synthesis Model is an immensely complicated inquiry not suited to the section 271 process" (*Virginia 271 Order* ¶ 105) also misses the point. *Redesigning* the Synthesis Model to eliminate its tendency to overstate transport costs is certainly beyond the scope of a 271 proceeding. But *recognizing* that the Model suffers from error in the particular circumstances of this case, and *reconsidering* whether an aggregate non-loop benchmark should remain the conclusive test of TELRIC compliance in these circumstances, are at the core of the Commission's duties within this case. Section 271 requires the Commission to decide whether Verizon's UNE prices are just and reasonable—and to make that decision based on the best evidence available within the 90 day statutory life of this case, not some

[82] *Petitions of WorldCom, Inc., Cox Virginia Telecom, Inc., & AT&T Communications*, CC Docket Nos. 00-218 and 00-251, Verizon Reply Post-Trial Brief on Cost Issues (Jan. 31, 2002) at 133.

[83] *Id*.

[84] *Id*. at 134.

[85] New Hampshire/Delaware 271 proceeding, AT&T Reply Comments (Aug. 12, 2002), Lieberman/Pitkin Reply Decl. ¶¶ 18-19.

future proceeding. Because the Synthesis Model does not estimate relative transport costs accurately, the best available evidence of rate reasonableness in this proceeding are (1) benchmark analyses that exclude transport, and (2) direct scrutiny of the TELRIC compliance of Verizon's rates. This declaration, and the accompanying declaration of Michael Baranowski, demonstrate that Verizon's switching prices in West Virginia flunk both tests.[86]

The proposition that automatic application of benchmarking is permitted by the deferential standard of review of state commission cost findings under the Act is also unfounded. The degree of deference to give in reviewing cost findings by state commissions is an entirely separate issue from the degree of disaggregation by which the review, deferential or otherwise, must focus. And the fact that the Commission's benchmarking presumptions are a reasonable administrative shortcut in many circumstances does not provide a justification for applying those presumptions in the minority of circumstances where the presumptions are dysfunctional.

Likewise irrelevant is the FCC's finding that "re-examination of the Synthesis Model is an immensely complicated inquiry not suited to the section 271 process." *Id*. at ¶ 106. AT&T is not asking the FCC to reconsider or reengineer the SynMod in these case – but merely to recognize its limitations by being judicious in using it as a device for excluding more direct and reliable evidence of rate reasonableness. The Commission has an obligation—in *this* case—to determine whether VZ's prices are just and reasonable, based on the best evidence of record available in *this* case. That the problems with the Synthesis Model may have broader implications beyond the scope of this case does not

[86] Lieberman Decl. ¶ 20.

give the Commission a license to ignore those issues that Congress has directed the Commission to decide here.[87]

Verizon's assertion that there may be errors in other modules of the SynMod, and that those errors are large enough to offset the error in the transport cost module, is pure speculation, unsupported by the record. Lieberman Decl. ¶¶ 12-14.

The notion that AT&T's interpretation of statute may require Commission "to evaluate individually every UNE rate relied upon in this proceeding," an administrative impossibility, is an attack on a straw man. *Virginia 271 Order* ¶ 106. As AT&T emphasized repeatedly, time-saving administrative presumptions like benchmarking presumption (and aggregation of elements for benchmarking) are entirely lawful absent particularized showing by challenging party that presumptions break down for particular UNEs.

Finally, the Commission's elaborate effort to show that issue is moot because Section 271 requires findings of rate reasonableness only at an aggregate, multi-UNE level, and that benchmarking non-loop prices in the aggregate "reflects the commercial reality of how non-loop UNEs are purchased" (*Virginia 271 Order* ¶¶ 107-112 & n. 385) ignores AT&T's rejoinder that including transport rates and costs taints the benchmark comparison for the *entire aggregate bundle* of non-loop UNEs. Lieberman Decl. ¶ 21.

[87] *Id*.

VII. VERIZON SHOULD BE REQUIRED TO EXPLICITLY COMMIT THAT IT WILL NOT CHALLENGE THE STATE COMMISSIONS' BASIC AUTHORITY TO ADOPT, ENFORCE, OR MODIFY VERIZON'S PERFORMANCE ASSURANCE PLANS.

As Verizon acknowledges, the Commission has frequently found that the performance assurance plans ("PAPs") in States where Verizon has already received Section 271 approval provide "strong assurance that the local market will remain open after [Verizon] receives section 271 authorization." Application at 106 (citation omitted). The PAPs in effect in Maryland and the District of Columbia, and the PAP proposed by Verizon in West Virginia, contain provisions empowering the State commissions to change the PAP.[88]

Verizon, however, has refused to agree that it will not challenge the basic (general) authority of the PSCs to modify or enforce the PAPs.[89] Instead, as it makes clear in its Application, Verizon states that it will not waive its right to challenge the PSCs' authority to impose changes to the PAP "without Verizon's consent." Thus, Verizon reserves "the right to challenge *future*, nonconsensual amendments to the Plans." Application at 107 n.88 (emphasis in original).[90]

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[88]These provisions provide, *inter alia*, for annual review by the PSC and for "other changes" suggested by the PSC, Verizon, or any CLEC at any time. *See, e.g.,* Maryland, D.C. and West Virginia PAPs at ¶¶ II.K.1 – II.K.3. As Verizon acknowledges, in West Virginia the PSC has not yet approved the PAP that it has proposed. *See* Application at 106.

[89]By "basic" or "general" authority, AT&T is referring to the overall authority of the PSC to enforce or make modifications to the PAP. By contrast, AT&T is not suggesting that Verizon should be required to waive its right to challenge particular changes in the PAP, such as the amount of particular penalties to be paid under the PAP.

[90] Although its Application indicates that it reserves the right to challenge only "nonconsensual" modifications to the PAP, Verizon's witness in the Maryland PSC's 271 proceeding was unable to explain if there were *any* limitations to Verizon's potential challenges to the PSC's authority to enforce or modify the PAP. Maryland PSC 271 Proceeding, Tr. at 260 (Canny) (Application, App. B-MD, Vol. 7, Tab 32). Indeed, Verizon's witness stated that the PSC did not have the authority to "enforce a PAP," and did not even rule out the possibility that Verizon would challenge modifications to the PAP to which it had agreed in other jurisdictions. *Id.* at 252 (Canny).

By reserving the right to challenge the general authority of the PSCs to modify the PAPs without its consent, Verizon essentially renders the PAPs meaningless as a deterrent to "backsliding," or violations of the checklist, by Verizon in the future. PSCs may find it necessary to modify the PAP in the future – even without Verizon's consent – if they find that the current PAP is ineffective as a deterrent to anticompetitive conduct or otherwise wish to ensure that the local exchange market within the State is open to competition.[91] However, because Verizon insists on reserving the right to challenge the general authority of the PSCs to make modifications to the PAP without its consent, there is no assurance that a PAP which proves ineffective can be appropriately modified.

The possibility that Verizon will challenge "nonconsensual amendments" to the PAP also discourages competition by CLECs. The knowledge that the PAP will ensure an open market can only encourage CLECs to compete aggressively with Verizon in providing local exchange service. Conversely, absent assurance that the PSC can make any necessary modifications to the PAP if it proves to be an inadequate deterrent to anticompetitive conduct by Verizon, CLECs will be reluctant to devote the substantial resources and efforts that are required for mass-market entry.

The possibility that Verizon will challenge the basic authority of the PSCs to modify the PAPs is not a theoretical concern, in view of Verizon's past conduct. When Verizon filed its application for Section 271 authority for New Jersey with this

[91] *See, e.g., Virginia 271 Order* ¶ 198 (finding that Verizon's PAP in Virginia, "in concert with the Virginia State Corporation's active participation in implementing modifications to promote the oversight of Verizon's performance, provides sufficient assurance that Verizon will have a compelling incentive to maintain post-entry checklist compliance"); *New Jersey 271 Order* ¶ 176 (stating that the PAP, in combination with the New Jersey BPU's active oversight of the Plan and its stated intent "to undertake a comprehensive review to determine whether modifications are necessary, provides additional assurance that the market will remain open").

Commission, it expressly relied on the PAP in that State as evidence of its compliance with Section 271.[92] Yet, only three months after the Commission approved its New Jersey 271 application in June 2002, Verizon instituted a court action challenging the New Jersey Board of Public Utilities' imposition of parts of the New Jersey PAP on the basis (*inter alia*) that the Board lacks the authority to impose such a plan.[93] At no time during the *New Jersey 271* proceeding before this Commission did Verizon even suggest that it would challenge modifications that the BPU had made to the New Jersey PAP.[94]

Because of Verizon's refusal to waive any challenge to the basic authority of the PSCs to impose "nonconsensual" modifications to the PAP, the Commission and the CLECs have no assurance that the PAPs adopted in Maryland, the District of Columbia, and West Virginia will survive Verizon's entry into the in-region interLATA market. As a result, no effective incentive exists for Verizon to comply with the Act and refrain from anticompetitive conduct after its Application is approved. In such circumstances, the Commission cannot reasonably find that approval of the Application would be

[92]*See, e.g., Application By Verizon New Jersey For Authorization To Provide In-Region, InterLATA Services in New Jersey*, filed December 20, 2001, in CC Docket No. 01-347, at 100 (asserting that Verizon meets the public interest standard of Section 271 because "Verizon also is subject to a strong, self-executing performance assurance mechanism that provides still further incentives to provide the best wholesale performance possible"); *id.* at 103 (stating that the New Jersey PAP "provides 'strong assurance that the local market will remain open after [Verizon] receives section 271 authorization'") (quoting *New York 271 Order* ¶ 429).

[93]*See* Superior Court of New Jersey, Appellate Division, Docket No. A-576-02-T2, Brief on Behalf of Verizon New Jersey Inc. in Support of Its Motion for a Stay, filed September 27, 2002, at 15-20. Verizon also challenged the modifications to the PAP made by the BPU on procedural and due process grounds. *Id.* at 20-34.

[94]The order of the BPU that Verizon is currently challenging in the New Jersey courts was adopted on March 28, 2002, only two days after Verizon filed its second (and ultimately successful) application for 271 authority in New Jersey. Although Verizon filed reply comments and numerous *ex parte* letters with this Commission in the *New Jersey 271* proceeding after it filed its Application, none of these filings stated or suggested that Verizon would challenge modifications that the BPU made to the PAP.

"consistent with the public interest, convenience, and necessity," as required by Section 271(d)(3)(C).

VIII. VERIZON'S ENTRY INTO THE INTERLATA MARKET WOULD VIOLATE THE PUBLIC INTEREST.

Even if the Commission could find that Verizon had fully implemented its obligations under the competitive checklist, the record here precludes any finding that Verizon's entry into the interLATA market in Maryland, the District of Columbia and West Virginia would be consistent with the public interest. At the heart of the public interest inquiry, as Congress conceived it and as this Commission has explained, is a determination of whether, notwithstanding checklist compliance, the local market is in fact fully and irreversibly open to competition. Because the Commission cannot make this determination in any of the three jurisdictions, a grant of section 271 authority is premature and wholly at odds with the fundamental premise of the Act.

A. InterLATA Authorization Is Not In The Public Interest Unless Verizon's Local Markets Are Irreversibly Open To Competition.

As a threshold matter, Verizon "disagrees as a legal matter that the Commission may conduct any analysis of local competition in its public interest inquiry." Verizon App. at n. 78. The Commission has previously considered and flatly rejected the argument once again advanced by Verizon:

> "We reject the view that our responsibility to evaluate public interest concerns is limited narrowly to assessing whether BOC entry would enhance competition in the long distance market. We believe that our inquiry must be a broader one. The overriding goals of the 1996 Act are to open all telecommunications markets to competition by removing operational, economic, and legal barriers to entry, and, ultimately, to replace government regulation of

> telecommunications markets with the discipline of the market. In order to promote competition in the local exchange and exchange access markets in all states, Congress required incumbent LECs, including the BOCs, to provide access to their networks in a manner that allows new entrants to enter local telecommunications markets through a variety of methods. In adopting section 271, Congress mandated, in effect, that the Commission not lift the restrictions imposed by the MFJ on BOC provision of in-region, interLATA services, until the Commission is satisfied on the basis of an adequate factual record that the BOC has undertaken all actions necessary to assure that its local telecommunications market is, and will remain, open to competition."[95]

Moreover, in Verizon's view (Verizon App. at 98-99), the Commission should virtually presume that the public interest will be served by granting Verizon's application, because (in Verizon's view) Verizon has met its checklist obligations and approval of its application will spur competitors to enter the local market. Any such presumption, however, would conflict directly with the plain language of the statute, which puts the burden on the applicant to show that its entry would be "consistent with the public interest;" the Commission has squarely rejected the argument that the public interest test can be satisfied by simply presuming that the benefits of entry into long distance will outweigh competitive harms from premature authorization.[96]

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[95] *Michigan 271 Order* ¶ 386 (footnotes omitted). *See also Massachusetts 271 Order* ¶ 233 ("we may review the local and long distance markets to ensure that there are not unusual circumstances that would make entry contrary to the public interest under the particular circumstance of this application").

[96] *See Michigan 271 Order* ¶ 43 ("Section 271 places on the applicant the burden of proving that all of the requirements for authorization to provide in-region, interLATA services are satisfied"); ¶ 388 ("As we have previously observed, 'the entry of the BOC interLATA affiliates into the provision of interLATA services has the potential to increase price competition and lead to innovative new services and marketing efficiencies.' Section 271, however, embodies a congressional determination that, in order for this potential to become a reality, local telecommunications markets must first be open to competition so that a BOC cannot use its control over bottleneck local exchange facilities to undermine competition in the long distance market. Only then is the other congressional intention of creating an incentive or reward for opening the local exchange market met.")

In fact, the absence of meaningful local competition is itself a compelling reason to reject an application as inconsistent with the public interest.[97] The lesson from experience in Texas is clear: allowing an incumbent LEC to provide interLATA services before local markets are open will not spur successful local competition.[98] If CLECs cannot profitably offer local residential service to customers, they cannot and will not effectively compete in local markets, regardless of whether the incumbent has obtained long-distance authorization.[99]

Accordingly, as the Commission has recognized, granting Verizon's request for long distance authority can serve the public interest only if the Commission finds that the BOC's "local market is open to competition and will remain so."[100] To determine whether the BOC's local telecommunications markets are in fact open to competition, the Commission first reviews the extent to which new entrants "are actually offering" local service to both business and residential customers through *each of the three means*

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[97] *See Sprint* v. *FCC*, 274 F.3d 549 (D.C. Cir. 2001).

[98] Although Verizon boasts (Verizon App. at n. 93) of competition currently being provided by Texas CLECs, the January 2001 *TPUC Report* on the "Scope of Competition in Telecommunications Markets of Texas" reveals that "monopoly power exists . . . in residential and rural markets in Texas" (*id.* at 83; *see* xiii) and severe financial problems have caused both large and small CLECs to reduce or eliminate their residential service in Texas (*id.* at 55-58, 80-81). The Report also reveals that the lack of competition has permitted SWBT to extend its monopoly into the provision of bundled combinations of local and long distance services, and to *raise* its prices for local services to both residential and business customers. *Id.* at x, 62-64, 79, 81). In sum, the TPUC concludes: "By the end of 2000, SWBT's financial position had strengthened relative to the CLECs. *SWBT's entry into the long distance market has weakened the ability of CLECs to challenge SWBT in local voice service. Id.* at 81 (emphasis added).

[99] Emboldened by its ability to market bundles of local and long distance services without any competition, in February, 2001, SWBT *raised* its residential long distance rates in Texas by 10 to 33 percent, *increased* its basic rates for long-distance service by more than 10 percent, and *also increased* the "discounted rate" for customers who buy other services from SWBT by 33 percent. "SWBT Raises Nonlocal Call Rates: Company Says Prices Better Reflect Costs," *The Dallas Morning News*, February 2, 2001.

[100] *See SBC Texas 271 Order* ¶ 431.

offered by the Act. *Michigan 271 Order* ¶ 391. Second, where local competition is not securely established, the Commission determines whether this reflects the continuing presence of entry barriers and BOC misconduct, or is attributable instead solely to the business decisions of potential new entrants.

B. Verizon Maintains Monopoly Power Over Residential Service In Maryland, Washington, DC, and West Virginia.

The "Act contemplates three paths of entry into the local market – the construction of new networks, the use of unbundled elements of the incumbent's network, and resale," (*Local Competition Order* ¶ 96). Congress "sought to ensure that all procompetitive entry strategies are available." *Michigan 271 Order* ¶ 387. As the Commission has recognized, its "public interest analysis of a section 271 application, consequently, *must* include an assessment of whether *all* procompetitive entry strategies are available to new entrants." *Id.* (emphasis added). And, as the Commission explained in the *Michigan 271 Order*, "[t]he most probative evidence that all entry strategies are available would be that new entrants *are actually offering* competitive local telecommunications services to different classes of customers (residential and business) through a variety of arrangements (that is, through resale, unbundled elements, interconnection with the incumbent's network, or some combination thereof) in different geographic regions (urban, suburban, and rural) in the relevant state, and at different scales of operation (small and large)." *Id.* ¶ 391 (emphasis added). In subsequent applications, the Commission has repeatedly considered the degree to which competitors have actually succeeded in offering local telecommunications services using the different entry strategies prescribed by the Act. *See, e.g., New York 271 Order* ¶¶ 13-14; *Texas 271 Order* ¶¶ 5-6.

Here, Verizon's own data confirm that there has been almost no UNE-based entry in the three jurisdictions. The E911 and UNE-P data presented by Verizon's own witness John A. Torre show that as of June 30, 2002, the total CLEC share of end-user switched access lines is 16% in D.C., and only 6% in Maryland.[101] In West Virginia, the total CLEC share of end-user switched lines is only about 4.5%. Torre Decl. Att. 3, ¶ 6 Table 1.

In Maryland, a total of less than 2% of all residential lines are served by CLECs who provide services either through their own facilities or UNEs. Torre Decl. Att. 1, ¶ 6 Table 1. Of this, roughly ¼ of 1% of residential CLEC lines are provided via UNEs purchased from Verizon. *Id.* In fact, Maryland UNE based competition accounts for only 1% of all switched access lines statewide, while facilities-based competition accounts for roughly 9%. *Id*.

The situation is similar in the District of Columbia: roughly 10% of residential lines are served by CLECs, and only ½ of 1% of these are UNE lines. Torre Decl. Att. 2, ¶ 6 Table 1. Even with Verizon's data throughout the District, UNE lines account for only the same ½ of 1% of all switched access lines, while facilities based CLECs serve approximately 19%. *Id*.

In West Virginia, CLEC UNE lines account for only 0.02% of all switched access lines statewide, and only 3% of all these switched access lines are provided by CLECs that are even partially facilities-based. Torre Decl. Att. 3, ¶ 6 Table 1. In all, only *130*

[101] CLEC information for West Virginia was withheld from the Commission publication to maintain firm confidentiality. *See* FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of June 30, 2002*, Table 6 (Dec. 2002).

residential lines in the entire state of West Virginia are operated by CLECs, whether through their own facilities or UNE-P. *Id.*. This final number represents less than 0.02% of all residential access lines in West Virginia. *Id.*

The statistics for each jurisdiction are summarized in Tables 1 through 3 below:

TABLE 1: Total CLEC Penetration in Verizon's Washington DC Service Territory

	Quantity	Share
Verizon Retail Switched Access Line[102]	829,592	79.6%
CLEC Facilities-Based Lines (Torre Dec. Att. 2 Table)	193,000	18.5%
CLEC UNE-P Lines (Torre Dec. Att. 2 Table 1)	5,400	0.5%
CLEC Resale Lines (Torre Dec. Att. 2 Table 1)	14,000	1.4%
Total Lines in Verizon Washington DC Service Territory	1,041,992	100%

TABLE 2: Residential Market CLEC Penetration in Verizon's Washington DC Service Territory

	Quantity	Share
Verizon Retail Switched Access Line[103]	296,142	91.3%
CLEC Facilities-Based Lines (Torre Dec. Att. 2 Table)	20,000	6.2%
CLEC UNE-P Lines (Torre Dec. Att. 2 Table 1)	1,700	0.5%
CLEC Resale Lines (Torre Dec. Att. 2 Table 1)	6,500	2.0%
Total Lines in Verizon Washington DC Service Territory	324,342	100%

TABLE 3: Total CLEC Penetration in Verizon's Maryland Service Territory

	Quantity	Share
Verizon Retail Switched Access Line[104]	3,488,961	86.7%
CLEC Facilities-Based Lines (Torre Dec. Att. 1 Table)	382,000	9.5%
CLEC UNE-P Lines (Torre Dec. Att. 1 Table 1)	41,000	1.0%
CLEC Resale Lines (Torre Dec. Att. 1 Table 1)	110,000	2.8%
Total Lines in Verizon Maryland Service Territory	4,021,961	100%

[102] FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of June 30, 2002*, Table 6 (Dec. 2002).

[103] FCC Statistics of Common Carriers 2000-01 Edition, Statistics of Communications Carriers as of December 31, 2001, at Table 2.4 (September 15, 2002).

[104] FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of June 30, 2002*, Table 6 (Dec. 2002).

TABLE 4: Residential Market CLEC Penetration in Verizon's Maryland Service Territory

	Quantity	Share
Verizon Retail Switched Access Line[105]	2,484,674	96.2%
CLEC Facilities-Based Lines (Torre Dec. Att. 1 Table)	39,000	1.5%
CLEC UNE-P Lines (Torre Dec. Att. 1 Table 1)	9,300	0.4%
CLEC Resale Lines (Torre Dec. Att. 1 Table 1)	48,000	1.9%
Total Lines in Verizon Maryland Service Territory	2,580,974	100%

TABLE 5: Total CLEC Penetration in Verizon's West Virginia Service Territory

	Quantity	Share
Verizon Retail Switched Access Line[106]	940,483	95.3%
CLEC Facilities-Based Lines (Torre Dec. Att. 3 Table)	32,000	3.2%
CLEC UNE-P Lines (Torre Dec. Att. 3 Table 1)	1,800	0.2%
CLEC Resale Lines (Torre Dec. Att. 3 Table 1)	13,000	1.3%
Total Lines in Verizon West Virginia Service Territory	987,283	100%

TABLE 6: Residential Market CLEC Penetration in Verizon's West Virginia Service Territory

	Quantity	Share
Verizon Retail Switched Access Line	624,333	99.341%
Total Lines in Verizon West Virginia Service Territory[107]	628,474	100%

C. The Lack Of Meaningful UNE- and Facilities-Based Competition In Verizon's Local Residential Markets Is Due To Entry Barriers And Verizon's Conduct.

Because the relevant data show a lack of meaningful UNE-P competition, the Commission must next determine "whether the lack of competitive entry is due to the BOC's failure to cooperate in opening its network to competitors, the existence of barriers to entry, the business decisions of potential entrants, or some other reason." *Michigan 271 Order* ¶ 391. To make this determination, the Commission should

[105] FCC Statistics of Common Carriers 2000-01 Edition, Statistics of Communications Carriers as of December 31, 2001, at Table 2.4 (September 15, 2002).

[106] FCC, Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of June 30, 2002*, Table 6 (Dec. 2002).

[107] FCC Statistics of Common Carriers 2000-01 Edition, Statistics of Communications Carriers as of December 31, 2001, at Table 2.4 (September 15, 2002); Torre Dec. Att. 3 Table.

consider all "relevant factors" that might "frustrate congressional intent that markets be open [to competition]." *KS/OK 271 Order* ¶ 267. A review of the evidence makes clear that entry barriers and Verizon's own actions have perpetuated its monopoly over residential service in the three jurisdictions.

In sum, the lack of UNE-based CLEC competition for service in the three jurisdictions is due to Verizon's "failure to cooperate in opening its network to competitors" and the "existence of barriers to entry," *not* "the business decisions of potential entrants" that are independent of the entry barriers and BOC misconduct. *Michigan 271 Order* ¶ 391. Nothing suggests that potential UNE-based entrants have decided that the local markets in Maryland, DC and West Virginia, though open, are simply not worth pursuing, or "that competitive alternatives can flourish rapidly throughout the state." *Id.* ¶ 392. The local markets in the three jurisdictions are simply not open to competition, let alone irretrievably open.

CONCLUSION

For the foregoing reasons, Verizon's application for authorization to provide in-region, interLATA services in Maryland, Washington, DC, and West Virginia should be denied.

Respectfully submitted,

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January 9, 2003

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Comments of AT&T Corp. was served, by the noted methods, the 9th day of January, 2003, on the following:

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